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The re-politicization of European minority protection:

Six cases from the FCNM monitoring process

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ECMI STUDY #7
April 2012

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ECMI Study
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ABBREVIATIONS

ACFC	Advisory Committee to the Framework Convention
CAHMIN	Ad Hoc Committee for the Protection of National Minorities
CM	Committee of Ministers
CoE	Council of Europe
ECHR	European Convention on Human Rights
FCNM	Framework Convention for the Protection of National Minorities
GR-H	The Rapporteur Group on Human Rights
NGO	Non-Governmental Organization
PA	Parliamentary Assembly

The re-politicization of European minority protection: Six cases from the FCNM monitoring process

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INTRODUCTION[1]

International normative frameworks serve to elevate the rights of specific beneficiaries to a level where state power is forced to react to relevant normative claims. A government can choose not to respect the rights in question, but in doing so it takes a public and international stand against the willingness of protecting beneficiaries. If, on the other hand, a government decides to sign up to the international normative framework, it agrees to periodical review of its behaviour in relation to the beneficiaries of the framework. This latter relationship is often difficult and tense depending on the domestic situation related to the specific issues protected by the normative framework. So, for instance governments that have adopted an official language will find it difficult to accept the right of minority groups to speak a different language than the official one in public affairs. In the oversight and monitoring of a normative framework governments are thus required not only to co-operate in the review process but also to explain why rights of beneficiaries are not protected.

The Framework Convention for the Protection of National Minorities (FCNM) was adopted in 1995 by the Council of Europe member states at a time when the rights of persons belonging to national minorities in the Balkans were being violated due to the conflict which erupted after the breakup of the former Yugoslavia in the early 1990s. Like in the immediate aftermath of the World War I, when the Allied Forces realized that the shifting borders in Europe would create a number of new national minorities whose existence would be threatened by new rulers, the Council of Europe member states realized in the early 1990s that whichever borders would eventually come into being after the Balkan conflict would likewise create new minorities and thus a risk that these would suffer violations of their rights at the hands of new rulers. There was, therefore, a perceived need to adopt an international scheme of rights that could be imposed on these rulers. Thus, drawing on the experience of the early part of the 20th Century, the idea of the FCNM was conceived in 1993 at the Vienna Summit of the Council of Europe, and the document was drafted in the months immediately after the Summit.

The drafting of the FCNM was trusted first to the Ad Hoc Committee for the Protection of National Minorities (CAHMIN) appointed by the Committee of Ministers (CM). The CM is the Council of Europe's decision-making body. The CAHMIN met regularly from October 1993 to October 1994 and drafted the instrument carefully and conservatively in the sense that the members of the CAHMIN had concerns that the political significance of presenting a non-controversial instrument sooner rather than later would send a signal to governments in the Balkan that the Council of Europe and its member states would not tolerate any violations of the rights of persons belonging to national minorities.[2] The CAHMIN consisted of officials from relevant ministries of member states and experts in international law. However, in the final weeks of the drafting, the CM took over from the CAHMIN in order to settle a few political issues that had arisen during the drafting and which the experts/officials of the

1 I would like to thank Jakub Jaros and Oto Skale for research assistance and Jana Suhr for editor support.
2 See Malloy, *National Minority Rights in Europe*, Chapter 7 (Oxford: Oxford University Press, 2005).

CAHMIN did not have the mandate to settle.[3] Once the disagreements were settled in the CM, the instrument was submitted for adoption and opened for signatures.

The FCNM was received fairly well among the member states. Within the first two years after adoption 33 countries had signed the instrument.[4] In the next two years another three countries signed, and since 1999 seven countries have signed.[5] Some countries have decided not to sign.[6] Among experts the reception of the FCNM was slightly different.[7] Critics pointed out that an international instrument without a petition process and a strong power to sanction states would not have effect on the protection of beneficiaries. The ultimate power of the FCNM rests in the CM which issues country-specific resolutions on the basis of a monitoring process trusted to a group of experts, the Advisory Committee and a preliminary drafting trusted to one of the subsidiary groups of the CM, the Rapporteur Group on Human Rights (GR-H).

The early 1990s were a period of rapid expansion of the Council of Europe membership list. The member states under study in this paper were, with the exception of Georgia and Serbia, all members or became members shortly after the adoption of the FCNM. And the eastward expansion continued after 1998 when the FCNM came into effect. In 1998 the membership of the Council of Europe was 40; in 2011 it was 47. Of these, 39 have signed and ratified the FCNM; four have signed but not ratified it, and four have not signed. Notwithstanding that eight countries are taking the public and international stand not to protect persons belonging to national minorities against the overwhelmingly united group of member states that publicly agree to protect them, the FCNM has developed a near consensus approach to the protection of persons belonging to national minorities. This consensus became pronounced also through the monitoring process in the first decade of the instrument being in force. The process ran considerably smooth and the CM was able to adopt resolutions within a reasonable length of time from the start of the monitoring.

However, the second decade of the FCNM appears to show a different reality. There seems to be an increasing activity at the political level during the process of drafting the CM resolutions. This has slowed the monitoring process and given rise to concern that the FCNM is not enjoying the initial support it did. The political process is the focus of this paper. Specifically, it seeks to investigate the process in the GR-H. Which countries are experiencing a slower process? What are the issues raised? Which countries are involved in the individual cases? The paper aims to excavate issues and actors in the emerging expansion of the political process through an examination of open sources. The analysis is divided into the procedural aspects and the substantive issues. In order to put the analysis in perspective, a description of the monitoring process and its actors is offered first.

MONITORING PROCEDURE[8]

Articles 24-26 of the FCNM provide for a monitoring system to evaluate how the Treaty is implemented by states that have ratified the instrument.[9] It results in recommendations to improve minority protection in the states under review. The committee responsible for providing a detailed analysis on minority legislation and practice is the Advisory Committee to the Framework Convention (ACFC). It is responsible for adopting country-specific opinions. These opinions are meant to advise

3 It is not clear from the *travaux préparatoires* what the issues were.

4 1995-1996: Albania, Austria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovenia, Spain, Sweden, Switzerland, "The former Yugoslav Republic of Macedonia", Ukraine, United Kingdom.

5 1997-1998: Armenia, Bulgaria, Greece, and since 1999: Azerbaijan, Belgium, Bosnia & Herzegovina, Georgia, Montenegro, Serbia, Slovak Republic.

6 Andorra, France, Monaco, Turkey.

7 Geoff Gilbert, "The Council of Europe and Minority Rights", *Human Rights Quarterly*, 18 (1996), pp. 160-89.

8 Comments of expansion or correction are very welcome to info@ecmi.de.

9 Resolution(1997)010, adopted by the Committee of Ministers on 17 September 1997 – Rules adopted by the Committee of Ministers on the monitoring arrangements under articles 24 to 26 of the Framework Convention for the Protection of National Minorities.

the CM in the preparation of its resolutions. This section describes the various procedures and functions of the main bodies.

The Advisory Committee to the Framework Convention (ACFC)

The ACFC is composed of 18 independent experts elected and appointed for four years.[10] In accordance with Resolution (97)10 of the CM, members of the ACFC represent recognised expertise in the field of the protection of national minorities. They serve in their individual capacity, are independent and impartial and must be available to serve on the Committee effectively.[11] FCNM monitoring cycles take place every five years and begin with the submission of state reports. The first cycle required states to submit a first report within one year following the entry into force of the FCNM and additional reports every five subsequent years. For each cycle, the CM adopts an outline for state reports,[12] and questionnaires developed by the ACFC help states follow the outline during drafting. During the drafting, states may consult with minority organizations and NGOs which also have the option to submit their own so-called 'shadow reports.' When a state report is received by the Council of Europe, it is made public by posting it on the Council's website.

Following the arrival of the state report, members of the ACFC examines it using a wide variety of written sources of information from state and non-state actors. As part of the monitoring, the ACFC may carry out country visits during which it meets with government officials, parliamentarians, representatives of minorities, NGOs, human rights specialised bodies and other relevant interlocutors. A final step of the examination is the drafting and adoption of an Opinion. In the ACFC, the draft Opinion is read and reviewed by the entire Committee in order to ensure agreement. The Opinion is forwarded to the state in question in order to provide it with the opportunity to make comments within a deadline of four months.[13] The Opinion is also circulated to all states sitting in the CM. Four months after forwarding the Opinion it is made public by the Secretariat to the FCNM. Four months are also the deadline for the state in question to submit its comments. With the adoption of the Opinion by the ACFC and transfer to the CM for the adoption of a resolution containing conclusions and recommendations on the implementation of the FCNM in the state in question, the monitoring process moves from the technical expert level to the political level.

However, once the political process is finalized with the adoption of a resolution, states are expected to organize follow-up meetings on the results of the monitoring and in order to prompt discussions on the measures to be taken to improve minority protection. Follow-up meetings bring together actors concerned by the implementation of the FCNM - both governmental and non-governmental – and examine ways to put to practice the results of the monitoring.[14] The post-resolution phase is thus again monitored by the experts of the ACFC.

The role of the Committee of Ministers (CM)

The CM has the final responsibility in the monitoring of the FCNM as per Article 26 of the instrument. The CM comprises the Ministers for Foreign Affairs of all the member states, or their

10 See http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/ACFC_Intro_en.asp (accessed 15.4.2012).
11 Resolution (97)10 "Rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities" adopted by the Committee of Ministers on 17 September 1997 at the 601st meeting of the Ministers' Deputies.
12 Renewal of authorisations granted to the Advisory Committee for the first monitoring cycle adopted at the CM's 740th meeting on 7 February 2001 and Monitoring of the implementation of the Framework Convention at its 835th meeting on 08 April 2003.
13 General issues related to the monitoring of the Framework Convention and Resolution, CM/Res(2009)3, adopted by the Committee of Ministers on 16 April 2009 at its 1054th meeting amending Resolution (97)10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities.
14 For more on specific follow-up meetings, see http://www.coe.int/t/dghl/monitoring/minorities/4_Events/ACFC_FollowUp_en.asp (accessed 15.4.2012).

permanent diplomatic representatives in Strasbourg called the Deputies.[15] It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly (PA), it is the guardian of the Council of Europe's fundamental values. It monitors member states' compliance with their undertakings. In May 1951 the CM invited each member state to appoint a Permanent Representative who would be in constant touch with the organisation. All Permanent Representatives reside in Strasbourg. They are usually senior diplomats with ambassadorial rank, occasionally chargés d'affaires. In 1952 the CM decided that each Minister could appoint a Deputy. The Deputies have the same decision-making powers as the Ministers. A Deputy is usually also the Permanent Representative of the member state.

The CM also determines a number of procedural rules relating to the monitoring of the FCNM. Among these are Resolution 1997 (10) and Resolution CM/Res(2009)3 which have paved the way for the functioning of the monitoring.[16] The country resolutions are by and large based on the ACFC's Opinions. The complementarity between the two bodies is therefore essential for the monitoring exercise. During the preparation of a resolution, other states and non-state parties have an opportunity to express views with regard to the situation in the state concerned. This part of the process takes place in the GR-H.[17]

The Rapporteur Group on Human Rights (GR-H)

The GR-H is the subsidiary group of the CM dealing with human rights.[18] Subsidiary groups have considerable power in the Council of Europe system. Each Rapporteur Group deals with matters falling within its field of activity in close contact with the Secretary General. As such, it plays a part in the supervision of progress and results of the major projects and programme. Rapporteur Groups engage in general policy discussions of relevance to their sectors of activity. They develop their activities in contact with the PA, its committees, their chairs and Rapporteurs, with the Congress of Local and Regional Authorities of the Council of Europe and its bodies as well as with steering committees, their Bureaux and chairs, and conferences of specialised ministers and their preparatory committees. Rapporteur Groups are responsible for maintaining dialogue with the steering committees and partial agreements (working in their respective sector of activities).This includes the holding of hearings. Rapporteur Groups may appoint Working Parties or Thematic Co-ordinators for a fixed time to consider specific issues within the Group's field of competence. Rapporteur Groups have no decision-making power. However, they are important in drawing up

> draft decisions ready for adoption as they stand by the Ministers' Deputies. These draft decisions will be included in the Notes on the Agenda with a comment to the effect that they have been prepared and, if appropriate, agreed to by a Rapporteur Group or Working Party. Wherever possible, they may be proposed for adoption without debate at the start of the Deputies' plenary meeting.[19]

15 See http://www.coe.int/t/cm/aboutCM_en.asp (accessed 15.4.2012).
16 See notes 9, 10 and 11
17 General issues related to the monitoring of the Framework Convention adopted at the 756th meeting of the CM on 12-14 June 2001.
18 See https://wcd.coe.int/ViewDoc.jsp?Ref=CMWorkProc05&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).
19 "Working Methods of The Ministers' Deputies" CM/Del/Dec(94)506/ADM3 https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(94)506/ADM3&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

In June 1985, the Deputies of the CM set up nine Rapporteur Groups covering the various fields of the Council of Europe's activities. Their main function was to prepare the Deputies' debates on certain particularly important topics. As recommended subsequently by the GT-Sages,[20] the Ministers' Deputies decided to restrict the number of Rapporteur Groups to the ones already in existence and to entrust other matters to individual Rapporteurs who would be free to decide their own working methods, under the motto "individual work – collective decision."[21] The distinctive feature of the Rapporteur Groups is their informality: they are not subject to the rule of quorum and have no decision-making power; they recommend action to be taken by the Deputies. Since January 1994,[22] Rapporteur Groups are open to all delegations wishing to take part in the activities, including states enjoying observer status with the CM. Their members shall be permanent representatives or their deputies.

Chairs of Rapporteur Groups are appointed from among Permanent Representatives. When the chair of a Rapporteur Group becomes vacant, the Chair of the Ministers' Deputies notify the Deputies and any candidate interested in the position can notify the Chair of the Ministers' Deputies accordingly. The Deputies' Bureau selects Chairs of Rapporteur Groups in accordance with a number of criteria, such as seniority, qualifications, availability and stated interest in the field of activities. Gender balance is also taken into consideration. The outgoing Chair of the Ministers' Deputies may be offered the chairmanship of a group, regardless of his/her seniority. The Bureau of the CM submits recommendations to the Ministers' Deputies who then take a decision. The Bureau seeks to make a recommendation by consensus, in principle within two meetings. When there is more than one candidate, the Chair will carry out consultations with the candidates, in order to identify a consensual solution to be presented to the CM. If the Bureau does not reach consensus, the full list of candidates is submitted for a decision by the CM. The list will contain the candidates who have expressed to the Chair the wish to maintain their candidature. If the Bureau makes a recommendation, but a candidate maintains his/her candidature, then the list of candidates will be submitted for a decision by the CM.

The term of office of Chairs of Rapporteur Groups is two years, in principle non-renewable, from the date of his/her nomination by the Deputies. This period may, however, be extended by the Ministers' Deputies in exceptional cases, where continuity in the activities embarked upon by a particular group is required. Within each Rapporteur Group, the Chair has an instigating and guiding role in the group's sphere of work. He or she reports to the Ministers' Deputies on the group's work when the items that the group has prepared come up for discussion. The Chairperson ensures that in principle the group meets regularly according to an agreed timetable, that the agenda justifies convening a meeting, including items which are relevant to the majority of delegations and that documents are distributed on time.[23]

The Chair of each Rapporteur Group and the Group itself may also make contact outside the Council of Europe. Such contacts are made after consulting the Chair of the Ministers' Deputies, who may decide to refer the matter to the Bureau and, if necessary, the Ministers' Deputies. These contacts should not interfere with the statutory role of the Secretary General when representing the Organisation. Invitations to attend a Rapporteur Group meeting must be addressed to a specific personality, and delegations must be informed ahead of the participation in group meetings.[24] A Vice-Chair can be appointed to stand in for the Chair in case of absence. Any appointment is made in close

20 At its 613th meeting, 18, 19 & 23 December 1997, the CM decided to set up a Committee of Wise Persons composed of Mario Soares, Chairman (former President of the Republic, Portugal), Gret Haller (Ombudsperson for Bosnia and Herzegovina, Switzerland), Tarja Halonen (Minister for Foreign Affairs, Finland), Laszlo Kovacs (Minister for Foreign Affairs, Hungary), Vladimir Schustov (Ambassador at large, Federation of Russia. The Committee, known as the GT-Sages, was entrusted with the task to propose reforms to the Council of Europe structure and work in light of the rapid expansion of membership. Involved in the GT-Sages' work were also the President of the Parliamentary Assembly, the President of the Venice Commission, a representative of the European Union Presidency, a representative of the OSCE Chairmanship-in-office, a representative of the host country's authorities. See CM/Del/Dec(97)609bis/1.4, GT-SUIVI(97)2 and 3 rev.
21 CM(99)155. See note 18.
22 See note 19.
23 CM(2010)154 final. See note 18.
24 CM/Bur/Del(2008)6. See note 19.

consultation with the Chair of the Ministers' Deputies. If both the Chair and Vice-Chair of a Rapporteur Group are absent or unavailable, a replacement is appointed on an ad hoc basis.

The aim of Rapporteur Groups is to function as forums for information exchange and identifying problems in preparation of Ministers' Deputies' discussions. Ideally, Rapporteur Groups draw up draft decisions to be presented to the Ministers' Deputies for adoption without debate. Rapporteur Groups also prepare the general exchanges of views held by the Deputies on the work done in each sector of the programme of activities. The Groups have no rules of procedure and in particular no rule on quorums. If a delegation considers it necessary, after the Rapporteur Group meeting, to continue discussion on an item at plenary level, the Chair of the Ministers' Deputies and the Chair of the Group are informed accordingly, and it is noted in the synopsis of the meeting. If Rapporteur Groups are unable to arrive at consensus, the matter is transferred to the Ministers' Deputies who adopt decisions as well as discuss general policy matters and rule on questions not resolved within the Rapporteur Groups.

Rapporteur Groups meet at different intervals. The GR-H meets generally every six weeks. Meetings are held without interpretation. Rapporteur Groups' agendas are in principle drawn up at the instigation of the Ministers' Deputies or the Deputies' Bureau. Within their particular spheres of activity, the Chair of each Rapporteur Group and the Group itself has room for initiative. In the interest of consistency, they keep the Chair of the Ministers' Deputies informed of their draft agendas and the Groups' programmes of activities. The Chair of the CM may decide to consult the Bureau and, if necessary, the Ministers' Deputies.

Meetings are announced in advance in order to provide knowledge of items for the agenda, planned timetable and timely distribution of documents. Documents for discussion are distributed 15 workings days in advance, and delegations must present proposed amendments in writing 3-5 working days before the date of the meeting. At the start of a discussion on a substantive point, the Chair gives a short introduction and indicates to delegations the maximum length of time available and of interventions. The Chair will announce the number of delegations asking for the floor and give the names of the next two on the list. Delegations have three minutes speaking time to their intervention depending on the agenda item, on the understanding that the Chair will use flexibility. When formal statements of some length have to be made, they are summarised briefly drawing attention to highlights and conclusions, and a full written text will be distributed separately and included in the records of the meeting. For exchange of views, delegations are encouraged to submit questions in writing in advance, which will enable the different personalities to answer them in their introductory comments.

The Chair guides the discussions towards an operational result, in particular by requesting delegations to react to compromise texts or specific proposals. When it appears that a consensus is emerging, the Chair may ask if there are any delegations which do not share the same position, with a view to conclude the discussion. In the event that consensus is not arising, the Chair has alternative informal measures that can be used. These include informal consultations, open-ended consultations, and face-to-face consultations.

Over the period researched for this Report, the GR-H has had general discussions about the informal meetings of the Group.[25] In particular, possible means whereby delegations unable to attend informal consultations might be informed were discussed. It was perceived necessary not only for their own benefit, but also in case their capitals needed to be informed about the negotiating positions taken up by the protagonists and the progress achieved. While a need for transparency has been emphasized, the

25 GR-H Rapporteur Group on Human Rights, GR-H(2011)CB2 of 9 February 2011: Synopsis Meeting of 3 February 2011 https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

informal character of such consultations is considered important in the interest in particular of the necessary freedom of debate. Generally, the chairs of the GR-H considered that the best way to be informed was to be present but endeavour when introducing an item which had been the object of informal consultations, to give a brief summary of the proceedings. It is open to states to issue statements of their positions, if they so wish, and they are encouraged to do so by the chairs. It has also been suggested that the question might be discussed in connection with the Deputies' working methods.

Another procedural topic which has been raised is the desirability of voting. Several delegations have voiced the opinion that that a text adopted by a majority was less authentic than one adopted by consensus, and that the dialogue which took place in the CM was as important a part of the monitoring process as the analysis performed by the ACFC. To this point, chairs have had to point out that, for the monitoring mechanism to function properly, consultations and discussions needed to be completed within a reasonable time, and to vote could conceivably be the only means of resolving cases in which irreconcilable differences exist.[26]

When summing up at the end of GR-H meetings, chairpersons indicate those items that are to be transferred to the CM Deputies for adoption. This is also indicated in the synopsis of the meetings. GR-H synopses are distributed no later than four working days after the meeting.[27] In the event, there is not a consensus in the GR-H on a resolution, the Chair of the GR-H has the option to transfer draft resolutions for adoption anyway. In that case, the final discussion and negotiation may take place in the CM.

The process of CM decisions

A resolution adopted by the GR-H through consensus, occasionally by vote, is forwarded to the CM Bureau which prepares the meetings of the CM Deputies. Usually resolutions are adopted immediately. A so-called "cut-and-paste" process is followed whereby the essential wording of the FCAC Opinion is lifted and inserted in the draft CM Resolution text. While the CM Deputies have been efficient since the FCNM came into effect in processing resolutions quite swiftly, the CM and the Deputies are nevertheless the last leg of the political process of the monitoring of the FCNM. Discussion and debate of individual resolutions is therefore to be expected. Once adopted, CM Resolutions are made public by the Bureau.

It is recalled, that the Deputies have the same decision-making powers as the Ministers. What is often not clear is that a Deputy is usually also the Permanent Representative of the member state. The overlap between membership of the GR-H and the CM Deputies is therefore significant. Only the chairmanship is usually not overlapping. Nevertheless, both functions usually act on the basis of instructions from the capital, meaning from the relevant ministry or minister competent to deal with the FCNM and the Council of Europe.

However, there have been instances where a resolution was not adopted when submitted to the CM Deputies. Of the case studied included in this Report, the Ukraine draft Resolution was not adopted at the first try. This led to the Chair of the CM Deputies to request that the Secretariat draw up a legal opinion on the repercussions of the failure to adopt a resolution within a Convention control

26 See note 25.

27 Convocations and synopses of the meetings of the Rapporteur Groups are issued under the responsibility of each group's Chair. Copies thereof are sent to all delegations and, where appropriate, to observers, in order to ensure that they are kept regularly informed of the work in progress in the different groups. At their meetings, Rapporteur Groups endeavour to make use of annotated agendas and Chairs of the Rapporteur Groups seek to comply with a deadline for circulation of working papers for their groups (in principle documents for discussion should be distributed 15 workings days in advance). The deadline may nonetheless be applied more flexibly according to the urgency of the subject to be discussed. Meeting synopses should provide a succinct record of the content of the debates without, as far as possible, identifying the delegations concerned (synopses should be distributed no later than 4 working days after the meeting).

procedure.[28] It was thus decided in the Bureau's 22 February 2010 meeting to pursue this issue, and a request was sent to the Chair of the GR-H.[29] On 5 March 2010, the Secretariat distributed the legal opinion requested by the Deputies.[30] The GR-H was invited to consider the issue with a view to finding a solution to ensure that the CM would fulfil its obligation to monitor the implementation of the FCNM. During its meeting of 23 March 2010, the Chairman informed the Group that his intention in placing the item on the agenda was not to have a debate of substance but simply to indicate that he would be proposing the resumption of the question in due course once he had consulted the delegations concerned. Several delegations intervened to support this approach.

On 14 June 2010, the FCNM Secretariat, in co-operation with the Directorate of Monitoring, submitted a draft text to the GR-H for its discussions during its meeting on 15 June 2010.[31] The text proposed a so-called "fall-back resolution" procedure for situations where the CM Deputies were not able to reach consensus on a draft resolution. Basically, the proposal suggests allowing the CM Deputies an opt-out from the standard procedure by simply passing on the ACFC Opinion as issued to the member states. Standard procedure is seen as taking the conclusions of the FCAC and either make them the CM Deputies' own or adapt them according to the Deputies' vision. This provides the CM Deputies with a fall-back position. The Secretariat prefaced the proposal with the following explanation:

> Introduction
>
> 1. During recent informal consultations concerning a draft resolution, considerable general discussion was devoted to the question of what form resolutions should take and how they should relate in principle to the conclusions of the Advisory Committee as presented in its Opinion in the light of the Committee of Minister's exercise of its supervisory function as provided in Article 26 of the Convention.
>
> 2. The Chair of the GR-H agreed to include an item on the agenda of the Group's meeting on 15 June 2010 in order to hold a broader discussion on this topic in the light of proposals to be submitted by the Secretariat.
>
> 3. The Secretariat wishes to underline strongly that the following proposals are submitted without prejudice to any draft currently before the GR-H. On the contrary, the intention is to make use of interesting proposals evoked in order to arrive at a potential solution to recently encountered problems, in particular the apparently increasing difficulty in achieving consensus on the text of resolutions to be adopted concerning the implementation of the Framework Convention by states. In other words, this is not intended to be an ad hoc operation but a general procedural framework to be used in specific circumstances. As such, if the GR-H so considers, it could be submitted to the Deputies for the adoption of a decision in the context of the procedures for supervising the implementation of the Framework Convention (FCNM).
>
> Ideas for formats

28 Ministers' Deputies Decisions CM/Del/Dec(2009)1067 Addendum 9 October 2009 1067th meeting, 7 October 2009, Chair's summing-up https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2009)1067&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).
29 Ministers' Deputies/Bureau Information documents CM/Bur/Del(2010)6 23 February 2010 Meeting report Strasbourg, 22 February 2010 https://wcd.coe.int/ViewDoc.jsp?id=1587369&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383 (accessed 15.4.2012).
30 DD(2010)118 restricted document.
31 GR-H Rapporteur Group on Human Rights GR-H(2010)8 14 June 2010. Framework Convention for the Protection of National Minorities – Format of draft resolutions on the implementation of the Convention by member states: suggestion for a "fall-back" format for situations in which consensus is impossible. Note prepared by the Secretariat of the Framework Convention, Directorate of Monitoring, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)8&Language=lanEnglish&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

4. Since the implementation of the FCNM began, the Advisory Committee (AC) has proposed and the Deputies adopted standard resolution formats for the first, second and third supervision cycles, adapted to the information requirements of each cycle. These formats are predicated on the premise that the Committee of Ministers, in compliance with its supervisory obligation under Article 26, will take the conclusions of the AC and either make them its own or adapt them according to its vision. This is the classic way of working, and it is proposed that it should continue to be the basic pattern for the supervision of the implementation of the FCNM.

5. However, situations in which there are seemingly irreconcilable differences between member states concerning the implementation of the Convention undermine the effectiveness of this approach. Such problems prolong consideration of draft resolutions to an unacceptable extent and may result in the transmission of a file to the Deputies to be resolved by vote – which is generally considered to be an inappropriate method of dealing with a supervisory function of this kind. This is detrimental to the effectiveness of the FCNM and an alternative "fall-back" procedure, and ideally one which left some elements of substance intact, would therefore be desirable.

6. During the Deputies' debate on a draft resolution in October 2009 (which resulted in the failure to adopt the draft) a number of delegations advocated an ad hoc solution according to which the Committee of Ministers simply transmits the Opinion of the AC to the authorities of the state under consideration. In the more recent discussions mentioned above, a delegation suggested a refined form of the proposal, according to which the Committee would, in the light of an appropriate preamble (i) acknowledge the Opinion of the AC, (ii) take note of the observations made by the government in response and (iii) encourage the government to maintain its constructive dialogue with the AC.

7. It may be considered that recourse to such a minimalistic approach would signal a certain abdication by the Committee of Ministers from its responsibility under the FCNM. This could be avoided by associating the principal conclusions and recommendations of the AC which in any event form the basis for the conventional type of resolution (see proposed template for a "fall-back" formula in Appendix2).

Circumstances in which the "fall-back resolution" procedure might be invoked

8. The last-resort decision to submit a resolution to the Deputies to be resolved by vote results from a finding by the Chair of the GR-H that there is no longer any hope of reaching a consensual text through negotiation. The decision to invoke the "fall-back" formula could be invoked in exactly the same way. Where the Chair of the GR-H comes to such a conclusion he or she could either:

- propose to the GR-H to instruct the Secretariat to prepare a "fall-back" text for submission to the Deputies for adoption, or

- propose to give the Deputies the choice between the controversial "conventional" text and the "fall-back" version.

Additional procedural proposal

9. Whether or not the "fall-back" procedure proposed in this document is approved, the Secretariat intends to introduce, in the interest of transparency, a procedure according to which, upon presentation of Opinions to the GR-H by the AC, the latter's principal conclusions and recommendations are automatically issued to all delegations. The secretariat believes that this additional information will facilitate the examination of the Opinion.

Conclusion

10. The supervisory mechanism of the FCNM always runs the risk of being slowed down by problems of disagreement arising before the Committee of Ministers. It is proposed that the Deputies incorporate into their working methods a "fall-back" formula which, while greatly diminishing the scope for controversy still enables them to adopt a text related to a given supervision cycle which is not devoid of substantial content and therefore does not raise questions as to whether the Committee of Ministers is exercising its function under Article 26.

11. While the "classic" approach (see paragraph 4 above) should always be the first aim, it is suggested that the legitimacy of the fall-back procedure would enable the GR-H and the Deputies to devote less effort to extensive attempts at negotiation and avoid recourse to a vote. This could in turn streamline the Deputies' part of the supervisory process to the benefit of the functioning of the system as a whole.[32]

During the GR-H meeting on 15 June 2010, the Secretariat (Director of Monitoring) explained the thinking behind the proposal, concentrating in particular on the evident difficulty that the CM had had in accomplishing its supervisory duty under the FCNM when intractable differences between delegations result in the impossibility to arrive at a consensus and when moreover there is insufficient will within the CM to express a clear view leading to the possibility of resolving such issues by vote.

Next, the Chair set the stage for the debate by recalling that the procedure proposed should only be regarded as an absolute last resort and that it could not be applicable to any resolution currently pending before the GR-H. He noted, however, that the pertinence of the proposal was reinforced by the fact that, of five drafts submitted at the time, only one had been adopted. A heated and extensive debate ensued. Many delegations expressed their views apparently – according to the minutes of the meeting – without instructions from capitals. The comments were summarized in the minutes as follows:

- some delegations considered that the proposed procedure was contrary to the letter and spirit of the Framework Convention and of Resolution (97) 10 and should not be entertained;

- many delegations, while appreciating the logic of the proposal, saw it as an "easy way out" and as such too potentially attractive: so much so, in fact, that it could supplant the usual style of resolution to the detriment of the Committee's supervisory role and thus of the effectiveness of the Convention mechanism;

- others, some of whom agreed with this assessment, underlined that more work was needed to define the terms used in the text, to determine with precision the circumstances in which the fall-back procedure would be invoked so as to eliminate subjectivity as far as possible, and to assess the consequences of the measure not only for the Framework Convention but for other instruments as well;

- in addition some delegations considered that it would be more profitable if, instead of devoting attention to emergency solutions applicable in cases of failure, more thought were given to ways in which such failure could be avoided in the first place.[33]

In response to the comments, the Secretariat expressed satisfaction at the apparently unanimous will to preserve the CM's collective responsibility under the FCNM but added that measures would

32 See note 31.
33 GR-H Rapporteur Group on Human Rights GR-H(2010)CB7 21 June 2010, Synopsis Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

nevertheless be needed to reconcile this will with the manifest impossibility of reaching consensus in some cases. Specifically, the Director of Monitoring asserted that the choice did not lie between the "classic" and the "fall-back" resolution, but between the latter and no resolution at all. He mentioned in this context that one state had already submitted its third-cycle state report whilst the second-cycle resolution had not yet been adopted.

Closing the debate, the Chair, reiterating the emergency nature of the proposed procedure, suggested that the matter was taken up again at the next meeting, if appropriate in the light of refined proposals by the Secretariat following the debate. However, the following meeting on 30 September 2010 did not include a discussion of the "fall-back resolution" issue nor did any of the remainder of the meetings during 2010.

Instead, the November and December meetings of the GR-H included a debate on PA Recommendation 1904 (2010) on "Minority protection in Europe: best practices and deficiencies in implementation of common standards."[34] This Recommendation was submitted to the GR-H for a reply as part of the monitoring procedure since the PA shares the responsibility of monitoring Council of Europe instruments with the CM.

The role of the Parliamentary Assembly (PA)

The PA Recommendation 1904 (2010) on "Minority protection in Europe: best practices and deficiencies in implementation of common standards" is an example of the tools that the PA has at its disposal to fulfil its role of oversight. Recommendation 1904 is actually very short and consists of recommendations to the members of the CM. It addresses the implementation of several Council of Europe instruments, including the FCNM. Specifically, with regard to the FCNM it highlights the principles and the tenet of Article 2 of the instruments which holds that

> The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.[35]

During the 2 November 2010 meeting, the GR-H debated a reply to the PA whose text would have to be submitted to the CM for approval. It was thus not the text of the PA Recommendation that was up for debate but the GR-H's proposal to the CM for a reply to the PA. A draft text prepared by the Secretariat functioned as the starting point for the discussion in the GR-H. This text and subsequent text submitted to the GR-H for discussion is not unfortunately publicly available. The point of the PA's power as overseer of the monitoring processes is therefore not readily available for analysis.

However, the role of preparing the CM's reply to the PA in the GR-H is worth examining. According to the minutes of that meeting, two proposed amendments had been communicated to the GR-H.[36] One proposal by the delegation of the Russian Federation proposed to delete the last sentence of paragraph 1, and one by the Latvian delegation proposed to delete the whole paragraph. In response to the Russian proposal, the French delegation proposed to replace the deleted sentence by another sentence, "However, it has to be admitted that some states encounter specific difficulties in this regard taking into account their legal order or their national practices." It is, of course, not possible to fully assess the extent to these amendments and the substantive issues at stake. However, the Representative of the

34 Parliamentary Assembly REC_1904 (2010), CM/AS(2010)Rec1904 prov, DD(2010)512 listed first in the GR-H Annotated Agenda dated 22 October 2010 for the GR-H meeting on 2 November 2010. For the full text of Recommendation 1904, see Appendix C
35 Framework Convention for the Protection of National Minorities, ETS 157 of 1.2.1995 http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CM=8&DF=15/04/2012&CL=ENG (accessed 15.4.2012).
36 GR-H Rapporteur Group on Human Rights GR-H(2010)CB10 8 November 2010, Synopsis Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

Russian Federation indicated during the meeting that her authorities could accept this wording provided that the main verb "admitted" was replaced by "noted". The Chairman noted that this seemed to be generally acceptable, although the Representative of Greece considered that the reference to "constitutional order" in the original text was useful, and would need to have instruction in order to accept the amended wording.

With regard to the Latvian proposal, the Representative of Latvia explained that the two normative instruments mentioned in paragraph 2 were extraneous to the subject of the recommendation, which was the FCNM. The Representative of the Russian Federation recalled that the two instruments in question had nonetheless been addressed in the PA's text and suggested that the paragraph might be retained with a change to the main verb. The Chairman indicated that there was agreement to replacing "echoed" by "took note of" and to retaining the paragraph as thus amended. On this basis, the Chairman said that a "prov2" version of the text would be issued to all delegations shortly and he hoped that it would be possible to conclude the debate rapidly on the basis of the revised draft.[37]

A third proposal for changes did arrive after the 2 November 2010 meeting.[38] The GR-H's proposal for a CM reply to the PA Recommendation 1904 was therefore debated again at the GR-H's meeting on 7 December 2011. Except for one delegation that would have preferred to undo the amendment proposed at the last meeting to replace the term "echoes" in the first line of the second paragraph and another delegation which made a statement to the effect that in the vocabulary of multilateral diplomacy, the term "to take note" is strictly neutral, the Chair was able to conclude that there was consensus to send the draft reply to the CM for adoption during its next meeting on 12 January 2011.[39] In other words, the PA's recommendations do hold some sway in the monitoring process and can as shown here get the political tit-for-tat into play.

The procedural norm heretofore

During the first ten years of the FCNM being in force the norm for the time that an ACFC Opinion took to become a CM Resolution was around twelve months. Thus, the first countries to be monitored in the first cycle of monitoring, which began in 1999, saw for a majority of states a consistent pattern of Opinion-to-Resolution of twelve months. States submitting in 2000 followed the same pattern with the exception of Slovenia. Of the countries submitting in 2001, only Albania stood out with an Opinion-to-Resolution period of two and a half year. States submitting in 2002 and 2003 went through within twelve months with the exception of Bulgaria which lasted two years. For state reports submitted in 2004, some of which were second cycle reports, only Malta deviated from the norm by two months. Of the reports submitted in 2005, the Romania process exceeded the Opinion-to-Resolution norm by six months.

With 2006, the norm began to weaken. The Opinion-to-Resolution period for Latvia lasted a year and a half, while a resolution on Lithuania has yet to be adopted. The Opinion-to-Resolution period for the Ukraine, which submitted a state report in 2006, lasted almost three years. The cases of **Latvia**, **Lithuania** and the **Ukraine** are discussed in this paper below. The submission in 2007 by Bulgaria stalled in the GR-H process for almost two years until the CM adopted the Resolution on 1 February 2012. However, Bulgaria is omitted in this Report due to lack of open access to documentation. Also

37 CM/AS(2010)Rec1904 prov2, restricted document.
38 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
39 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

in 2007, Georgia submitted its first state report, while Poland submitted its second state report. These two processes remain unresolved, stalled in the GR-H. Both **Georgia** and **Poland** are discussed below.

In 2008, the Netherlands submitted a state report where the Opinion-to-Resolution period lasted a year and a half, while the period for the Serbian report lasted two years. A discussion of **Serbia** is included below. The progress report for Kosovo was also delayed by six months but will not be discussed here due to its unique character.[40] Of the reports received in 2009, CM Resolutions for Armenia and Italy have still not been adopted, while Malta has not submitted a state report as scheduled.[41] The Ukraine submitted a report in 2009 which is currently under examination by the ACFC. The ACFC delegation's country visit to the Ukraine only took place in January 2012.[42] Reporting submitted by states in 2010 or later is not included in this study as documentation remains restricted.

CASE STUDIES

In this main section, the monitoring processes from ACFC Opinion toward CM Resolution are examined with regard to Georgia, Latvia, Lithuania, Poland, Serbia and the Ukraine. Except for Georgia and Latvia, all examinations relate to second cycle of monitoring. Each case examines first the procedure and next the substantive issues.

Georgia

Georgia joined the Council of Europe on 27 April 1999 and signed the FCNM on 21 January 2000. With ratification on 22 December 2005, the FCNM went into force on 1 April 2006. The first cycle of monitoring began on 16 July 2007 when Georgia submitted its first State Report.[43] Based on a country visit by a delegation from the ACFC from 8-12 December 2008, the ACFC issued its first Opinion on Georgia on 19 March 2009.[44] The government of Georgia submitted comments to the Opinion six months later on 16 September 2009.[45] To date there has been no CM Resolution issued. The second cycle of monitoring is set to begin on 1 April 2012.

40 Under the FCNM an agreement between the Council of Europe and UNMIK signed on 23 August 2004 provided for monitoring even though Kosovo at the time was not a sovereign state.

41 The omission by states to submit state reports on time has been addressed by the ACFC and the CM with regard to Bosnia & Herzegovina, Cyprus and the United Kingdom. See 850th meeting – 03 September 2003, Proposal regarding the commencement of the monitoring of the Framework Convention without a state report and 974th meeting – 27 and 28 September 2006, Proposal regarding the commencement of the monitoring of the Framework Convention without a state report. Ministers' Deputies Agenda CM/Del/OJ(2003)850 3 September 2003, 850 Meeting of the Ministers' Deputies, Strasbourg, 3 September 2003, https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ(2003)850&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

42 FCNM Secretariat press notice, http://www.coe.int/t/dghl/monitoring/minorities/4_Events/News_Ukraine_jan2012_en.asp (accessed 15.4.2012).

43 Report submitted by Georgia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (received on 16 July 2007). State reports are available in PDFs at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Georgia (accessed 15.4.2012).

44 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, Opinion on Georgia, Adopted on 19 March 2009. ACFC Opinions are available in PDFs at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Georgia (accessed 15.4.2012).

45 COMMENTS OF THE GOVERNMENT OF GEORGIA ON THE FIRST OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY GEORGIA, (received on 16 September 2009). State comments are available in PDFs at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Georgia (accessed 15.4.20120).

Procedural aspects

The ACFC Opinion on Georgia was presented by the President of the ACFC to the GR-H on 2 February 2010.[46] During the meeting, the delegations of Georgia, Turkey, Armenia, the Russian Federation and Azerbaijan intervened in the discussion.[47] The texts of the interventions are not available.

During the GR-H meeting on 23 March 2010, a draft CM Resolution was on the agenda.[48] The Representatives of Georgia and the Russian Federation made statements which they asked to be reproduced in the records of the meeting (see next section).[49] After a debate during which certain delegations presented draft amendments, the Chairman noted that no consensus would be possible during the meeting.[50] Accordingly, the Secretariat was invited to pursue the drafting of a text in consultation with interested delegations. The Chairman reminded delegations that draft amendments were expected to be submitted in writing in good time before the meeting in order to facilitate the debate within the Rapporteur Group. In a written Addendum dated 1 April 2010 to the minutes of the 23 March 2010, the Representative of Turkey also made a statement (see text in next section).[51]

In the call for the next meeting on 15 April 2010, the Chairman of the GR-H invited the members to examine the draft Resolution with a view to approving it and submitting it to the CM Deputies at a future meeting and for adoption without further debate.[52] However, during the 15 April 2010 meeting, the Chairman indicated that he had granted more time to the Secretariat for consultations regarding the draft resolution in respect of Georgia.[53] He noted that Georgia had issued a proposal for amendments to be distributed, which would, if appropriate, be taken into consideration in subsequent examinations of the matter. In this connection, the Chairman announced that a revised version would be issued shortly, from which the repetitive mentions of "the Committee of Ministers" had been removed.

With the call for the following meeting on 18 May 2010, it was recalled that in a document the Secretariat had submitted a modified text in response to remarks by delegations concerning the repetition of the words "Committee of Ministers" in the initial draft by the Secretariat.[54] Moreover, it

46 GR-H Rapporteur Group on human rights GR-H(2010)1 22 January 2010, Annotated Agenda Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

47 GR-H Rapporteur Group on human rights GR-H(2010)CB1 8 February 2010, Synopsis Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

48 GR-H Rapporteur Group on human rights GR-H(2010)2 12 March 2010, Annotated Agenda Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012). The text for the first draft is not available. For the text of a revised text, see Appendix A.

49 GR-H Rapporteur Group on human rights GR-H(2010)CB3 29 March 2010, Synopsis Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

50 The identity of the delegations is not made public. Generally, amendments proposed during discussions are not made public by the Council of Europe.

51 GR-H Rapporteur Group on human rights GR-H(2010)CB3 add 1 April 2010, Addendum to the synopsis Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB3&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

52 GR-H Rapporteur Group on Human Rights GR-H(2010)4 1 April 2010, Annotated agenda Meeting of 15 April 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

53 GR-H Rapporteur Group on Human Rights GR-H(2010)CB4 20 April 2010, Synopsis Meeting of 15 April 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

54 GR-H Rapporteur Group on Human Rights GR-H(2010)5 7 May 2010, Annotated agenda Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-

was recalled that at the last meeting of the GR-H, the Georgian delegation submitted proposals for amendments to the draft Resolution. The proposed amendments were incorporated into a revised text of the draft Resolution. Finally, it was recalled that, at the GR-H meeting on 23 March 2010, the Turkish delegation had proposed an amendment to the text of the draft Resolution concerning persons belonging to the Meskhetian population.

The Chairman further explained in the call for the meeting, that since the last meeting of the Group, he had been approached by the Georgian and Turkish delegations which announced that, following an invitation by the Chair to pursue the matter bilaterally, an agreement had been reached in this regard between their respective authorities, to the effect that the text of the Resolution should not be modified but that the Deputies, when adopting the text of the Resolution, should be invited to decide as follows:

> [The Deputies] welcomed the steps taken by the Georgian authorities towards fully honouring their commitment on the repatriation and integration of the Meskhetian population deported by the Soviet regime and urged them to continue their efforts towards the successful completion of the repatriation process;

Ten days later, a Corrigendum was issued to the call for the 18 May 2010 meeting by which members of the Group were reminded that at the last meeting of the GR-H, the Russian delegation had proposed to delete the paragraph under the second indent (on the 2008 conflict) of the first point of the draft resolution and that the Russian delegation has also opposed the proposals of the Georgian delegation.[55]

Therefore, during the meeting of 18 May 2010, the Chairman began by recalling that at the last meeting of the GR-H, the Russian delegation had proposed an amendment and also opposed the proposals of the Georgian delegation.[56] He also recalled that following an agreement between the Georgian and Turkish delegations concerning an amendment proposed earlier by Turkey concerning persons belonging to the Meskhetian population, the Turkish proposal had been withdrawn. He noted, though, that the delegation of the Russian Federation had now, however, introduced a new proposal to amend the text on this subject.

Prior to the next meeting, the Chairman of the GR-H conducted informal contacts with the delegations. As a result of these contacts, the call for the next meeting on 21 September 2010 noted that the Chairman will inform the group of the state of progress of each of these texts and submit them, where possible or appropriate, for the consideration of the group.[57]

During the meeting, the Chairman observed that the Georgia resolution had now been on the table since the spring of 2010 and that action needed to be taken.[58] Assuming that all delegations accepted that the issue related to the Meskhetian Turks had been resolved by the proposal to modify the decision adopting the Resolution, the Chairman submitted his analysis of the other questions at issue. He recalled that the task of the CM in its capacity as the monitoring body of the Framework

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H(2010)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

55 GR-H Rapporteur Group on Human Rights GR-H(2010)5 corr 17 May 2010, Corrigendum to the annotated agenda Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)5&Language=lanEnglish&Ver=corr (accessed 15.4.2012).

56 GR-H Rapporteur Group on Human Rights GR-H(2010)CB5 27 May 2010, Synopsis Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

57 GR-H Rapporteur Group on Human Rights GR-H(2010)9 10 September 2010, Annotated agenda Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

58 GR-H Rapporteur Group on Human Rights GR-H(2010)CB8 27 September 2010, Synopsis Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

Convention was neither more nor less than to adopt a text indicating to the Georgian government what it must do to implement the terms of the FCNM.

However, progress had been blocked because the GR-H had been channelled into a debate concerning the rights and/or wrongs of the conflict of August 2008. The Chairman suggested that these rights and wrongs were irrelevant to the debate which needed to be brought to a swift conclusion. In conclusion, the Chairman strongly suggested that the most faithful way of executing this task would be to recommend to the Deputies the text initially proposed by the Secretariat, i.e. the "fall-back" method. There would not be unanimity, but probably a great majority behind this approach.

Next, a number of delegations took the floor to express their agreement with the Chairman's approach. From the public records it is not clear which delegations participated in the exchange during the meeting. One delegation regretted that the amendment it had proposed, which in its view would have de-politicised the matter along the lines set out by the Chairman, would not form part of the text transmitted to the Deputies and indicated its intention in such circumstances to re-propose it at that level, if necessary. At this point in the discussion, the Chairman noted that although there was no agreement on the text to be submitted, he considered that the voices in favour nonetheless authorised him to proceed as he had proposed. However, another delegation, considering that it was inappropriate to lay unfinished business before the Deputies, invited the Chairman to make one further attempt to find a consensus. This led the Chairman to distribute a draft amendment. In reaction, a third delegation recalled its repeated declaration that given its willingness to withdraw amendments previously tabled, it had already made a sufficient effort to reach a compromise, and could entertain no further proposal to change the text. It considered that the Chairman's proposal rendered a simple choice obscure, and proposed that the Chair should withdraw it. Finally, one delegation indicated that its authorities would probably be able to accept the Chair's proposal which in her view was inspired by the same considerations as her own.

Getting nowhere, the Chairman noted that his proposal, submitted in response to a specific invitation by a delegation had been issued too late for delegations to have instructed views. Stressing the need to define clearly the text the GR-H would invite the Deputies to adopt, he proposed to return to the issue at the GR-H meeting scheduled for 30 September with a view to adopting a clear if not unanimous position.

In the original call for the 30 September 2010 meeting, the Georgia Resolution was not on the Agenda.[59] This was, however, corrected on 27 September 2010 – three days before the meeting – with the issuance of an Addendum to the Agenda in which it was communicated that the Chairman would inform the group of the situation concerning this item.[60] During the 30 September 2010 meeting, the Chairman reminded the group that at its last meeting, he had proposed a compromise formula. The round of consultations arising from that proposal had not yet been completed and, accordingly, he had no text to put before the GR-H at the time. He would revert to the issue at the next meeting. The Chairman expressed his conviction that it is his duty to seek a consensual solution if there exists the remotest possibility of doing so.[61] The Chairman was scheduled to report back to the Group on

59 GR-H Rapporteur Group on Human Rights GR-H(2010)10 17 September 2010, Annotated agenda Meeting of 30 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

60 GR-H Rapporteur Group on Human Rights GR-H(2010)10 add 27 September 2010, Addendum to the annotated agenda Meeting of 30 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)10&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

61 GR-H Rapporteur Group on Human Rights GR-H(2010)CB9 rev 19 October 2010, Synopsis Meeting of 30 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB9&Language=lanEnglish&Ver=rev&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).

developments at the next meeting of the GR-H on 2 November 2010 and if possible make a proposal for next steps.[62]

During the meeting of the 2 Nov 2010, the Chairman reiterated his determination to achieve consensus on this issue, if there existed the slightest possibility of doing so, and his conviction that references to the conflict were unhelpful in a text the purpose of which was simply to assist Georgia in the implementation of the FCNM.[63] He had consulted widely with colleagues on the question, and had been reinforced in his view that the only way to remain faithful to the CM's mission under the FCNM was to take a decision on the basis of a draft in which the second operative paragraph would be drafted in neutral terms, as he had previously proposed. He would issue such a draft in the next few days and on the basis of this he would ask the Group for a definitive recommendation at the next meeting.

As expected the Georgia Resolution was on the Agenda for the 7 December 2010 meeting, and in the call for the meeting the Chairman reiterated his determination to achieve consensus on this issue if there existed the slightest possibility of doing so.[64] However, during the meeting the Chairman would note that in the absence of the Permanent Representative and Deputy Permanent representative of Georgia, no progress could be made on this issue at the meeting.[65] He drew delegations' attention to the exchange of letters he had had with the Georgian delegation and thanked the many colleagues who had expressed support for his point of view.

In January 2011, the Secretariat announced that Georgia was on the agenda for the 3 February 2011 meeting.[66] During that meeting, the Representative of Georgia confirmed his willingness to take part in open-ended, informal consultations. The Chairman would undertake to consult the protagonists with a view to proposing a date and time, and, in response to a request from a delegation, agreed to issue a consolidated text for that occasion.[67] The call for the following meeting on 17 March 2011 also included Georgia as an item on the agenda.[68] During that meeting, the Chairman noted that the recent informal consultations he had organised had been inconclusive, but that there now seemed to be an interest in discussing the proposals he had made on 30 November 2010 in further informal consultations. The group agreed to postpone this item. During the course of 2011, no results on the Georgia Resolution were made public by the FCNM Secretariat.[69]

62 GR-H Rapporteur Group on Human Rights GR-H(2010)11 22 October 2010, Annotated agenda Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
63 GR-H Rapporteur Group on Human Rights GR-H(2010)CB10 8 November 2010, Synopsis Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
64 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
65 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
66 GR-H Rapporteur Group on Human Rights GR-H(2011)3 21 January 2011, Annotated agenda Meeting of 3 February 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
67 GR-H Rapporteur Group on Human Rights GR-H(2011)CB2 9 February 2011, Synopsis Meeting of 3 February 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
68 GR-H Rapporteur Group on Human Rights GR-H(2011)4 of 7 March 2011, Annotated agenda Meeting of 17 March 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 15.4.2012).
69 See, http://www.coe.int/t/dghl/monitoring/minorities/4_Events/News_2011_en.asp (accessed 15.4.2012).

Substantive issues

As has been indicated above, the substantive issues holding up the process of drafting the CM Resolution on Georgia relate first and foremost to the divergent views of the 2008 conflict between Georgia and Russia. In addition, the issue of the repatriation of Meskhetian Turks played a secondary role which was, however, resolved in 2010. The reasons for the lack of resolve of the first issue in 2011 are not publicly available. The chronological review in this section simply serves to present the nature of the discussions in the GR-H.

The ACFC Opinion adopted on 19 March 2010 contained the following general remarks with regard to the 2008 conflict:

> The Advisory Committee finds that the conflict of August 2008, and those of the 1990's concerning South-Ossetia and Abkhazia, have [sic] had a negative impact on the implementation of the Framework Convention in Georgia. It considers, therefore, that the Georgian authorities, and all of the parties concerned, should step up their efforts and take an open and constructive approach with a view to finding a just and lasting solution to the conflict as soon as possible. In doing so, the principles enshrined in the Framework Convention must be fully respected to guarantee the rights of persons belonging to national minorities throughout the Georgian territory.[70]

The remark was followed by specific findings article-by-article indicating problems in the implementation of national minority rights in Georgia. On the basis of the findings, the ACFC Opinion on Georgia concludes with a number of recommendations. The draft Resolution on Georgia repeats the wording as follows:

> The Georgian authorities and all the parties concerned are encouraged to step up their efforts and to take an open and constructive approach in order to find as soon as possible a just and lasting solution to the conflict over South Ossetia / Tskhinvali region (Georgia) and Abkhazia (Georgia), as the conflict is adversely affecting the implementation of the Framework Convention throughout the entire Georgian territory. In doing so, the principles enshrined in the Framework Convention should be fully respected, in order to guarantee the rights of persons belonging to national minorities.[71]

At the presentation of the Opinion during the meeting of 23 Mar 2010, the Representatives of Georgia and the Russian Federation made the following statements:[72]

The Representative of Georgia:

> The Georgian delegation has distributed its amendments to the draft Resolution. Most of them are taken from the text of the Opinion of the Advisory Committee. The last sentence in our amendments refers to the "State Strategy of Georgia on occupied territories: Engagement through Co-operation", which was presented to the Deputies at their 3 February meeting and which among other issues is directly relevant to the protection of national minorities. However, I would like to state that we do not want to prolong the process of adoption of the draft Resolution and in case there is a consensus on the draft proposed by the Secretariat, we are ready to withdraw our amendments and support the transmission of the existing draft to Deputies for its subsequent adoption without debate.

70 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, Opinion on Georgia, Adopted on 19 March 2009, Section 172, ACFC/OP/I(2009)001.
71 The original document was classified and only a revised version was declassified. This text derives from the revised version of the draft Resolution dated 27 April 2010.
72 GR-H Rapporteur Group on human rights GR-H(2010)CB3 29 March 2010, Synopsis Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

As regards the Turkish amendment: I would like to reiterate what I have said at our last meeting and state that the Georgian authorities are strongly against this amendment, as we are confident that as it stands it has nothing to do with the Resolution in question and at this stage it is not relevant to Georgia under the Framework Convention on the Protection of National Minorities. I will explain our arguments in a minute, however from the outset I would like to clearly state that our objection to this amendment in no way aims to challenge Georgia's accession commitment on the repatriation of the population deported from Georgia by the former Soviet Union in the 20th century. Upon instructions from the capital, I should reiterate that we remain respectful to our political commitment and are and will be doing our best to duly honour it. Just two weeks ago, the Deputies adopted the decision, which is almost identical to the amendment proposed by our Turkish colleagues and we fully accept this decision, as it stands where it is most relevant and appropriate.

To our Turkish colleague I would like to say that the Resolutions of the Committee of Ministers adopted on the Framework Convention is about the Framework Convention and its provisions. Like the ECHR and most CoE international legal instruments and in line with principles of international treaty law, the rights and obligations of the contracting parties steaming from international legal instruments have concrete scopes of application, including some limitations. In this case, the obligations of states and individual rights of persons belonging to national minorities are limited to the jurisdiction of the state in question. Thus, when ratifying the Convention, Georgia undertook the legally binding obligation to implement the Convention within its own jurisdiction.

The provisions of the Framework Convention oblige the states with respect to the individuals of incumbent national minorities residing on its territory. Nothing in the Convention speaks about the rights of any "to be-national-minority-Group" sometime in the future. Apart of this, it is very well known that the Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. Moreover, we believe that the concept of repatriation to some extent differs from the concept of protection of national minorities, where the latter's objective is to provide the better environment for national minorities to stay in the countries where they actually reside. Otherwise, relevant provisions would have been included by the drafters in the text of the Framework Convention. As a party to the Convention, our interpretation is that the FC should protect people from genocide, ethnic cleansing, human rights violations etc. But, with its current wording, it is not designed to restore historic fairness. This is why, CM Resolution in question should remain within the scope of the FC and the issue, which is so important to the Turkish and the Georgian authorities as well, should be dealt within appropriate formats and frameworks. At our last meeting, we thought that this approach was shared by our Turkish friends, as they have voiced a statement for the inclusion in the records, without suggesting its incorporation in the draft Resolution to be prepared by the Secretariat. To be frank, I am a bit puzzled with this radical change in the initial position.

As to the remarks of the Russian delegation: Yes, indeed Opinion of the Advisory Committee speaks about repatriation issues. However, we should not forget that only because something is mentioned in the opinion does not mean that it should be copy-pasted in the CM Resolution. Moreover, the Opinion itself contains no references to this issue neither in the Executive Summary in the Preamble of the Opinion, nor in its "Concluding remarks", which according to the Advisory Committee are "reflecting 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".

Moreover, in the opinion, the issue of repatriation is only mentioned in the part on "specific comments" under Article 6 of the Convention. Again, I would refrain from deeply analysing why

this issue was at all included in the opinion on Georgia, but I would rather remind the colleagues that article 6 is dealing with inter-cultural dialogue and its provision reads the following: "The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media".

At our last meeting, our Russian colleague mentioned that this issue should be included in the Resolution as it is mentioned in the Opinion of the Advisory Committee. I should remind our Russian colleagues that in the last Opinion (I mean the last one published) on the Russian Federation adopted on 11 May 2006, much more and much critical is stated regarding the situation of the population deported from Georgia by the Soviet Union, to which the Russian Federation is a "state continuator". However, not a single word mentioning so called "Turk Meskhetians" could be found in the subsequently adopted CM Resolution. That is why, I only hope that such a wish to mention this issue in the resolution on Georgia is not an attempt to justify their failure "to stop issuing deportation orders and actively support national minorities to regularise their legal status, and provide guarantees regarding their access to rights", as recommended in the said Opinion on the Russian Federation.

I would also like to recall our last informal meetings on separate issues, where the Russian representatives so efficiently were defending their position with the well prepared legal arguments. This example creates an impression, at least to me, that by pushing this matter, with a good knowledge of its lack-of-relevance to the actual debate, the Russian delegation pursued other aims that among others are of detriment to the system established by the FC.

As for the comments and suggestions of the Russian delegation challenging the territorial integrity of Georgia, I believe no one in this room takes them seriously. However, it is not surprising but still sad that instead of living up with its international commitments, including as a member state of the Council of Europe and instead of withdrawing its illegal recognition of Georgia's occupied territories, the Russian side continuously attempts to justify all their wrongdoings.

To conclude Mr Chairman, I should say that this delegation remains open to compromise, but this compromise should be within the scope of FCNM application and ought to be based on clear and relevant arguments, not solely on doubtful political aspirations. I should also add that we would prefer to let the Deputies handle the issue, but we are also ready for further consultations as you have suggested. However, you would also understand that no consultation can be held in this organisation on the issue of Georgia's territorial integrity, as the position of the Council of Europe and all its member states, except one, are firm and unambiguous on this matter.

The Representative of the Russian Federation:

This delegation thanks the Secretariat for the presented draft Resolution of the Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities by Georgia. This delegation would like to present some comments on the paragraph under the second *tiret* of the first point of the draft Resolution.[73] First of all the wording of this paragraph given by the Advisory Committee is different than the wording of the current draft.

73 The tiret reads: The Georgian authorities and all the parties concerned are encouraged to step up their efforts and to take an open and constructive approach in order to find as soon as possible a just and lasting solution to the conflict over South Ossetia / Tskhinvali region (Georgia) and Abkhazia (Georgia), as the conflict is adversely affecting the implementation of the Framework Convention throughout the entire Georgian territory. In doing so, the principles enshrined in the Framework Convention should be fully respected, in order to guarantee the rights of persons belonging to national minorities. Draft Resolution CM/ResCMN(2010)… on the implementation of the Framework Convention for the Protection of National Minorities by Georgia, https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2010)27&Language=lanEnglish&Ver=rev&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 15.4.2012).

> We have studied carefully the Opinion of the Advisory Committee concerning the content of the mentioned paragraph and could agree with the wording proposed by the Advisory Committee if the situation would be preserved as it was in 2005 when Georgia ratified the Framework convention. But the situation has changed dramatically after the Georgian military attack against South Ossetia in August 2008 and following proclamation of the independency by Republic of Abkhazia and Republic of South Ossetia. These changes transfer the content of the paragraph to the purely political sphere which takes it out of the scope of the Advisory Committee.
>
> May I remind my colleagues that until now the Committee of Ministers avoided mentioning South Ossetia and Abkhazia in a way it is done in the Draft Resolution on the implementation of the Framework Convention by Georgia. The adoption of the proposed draft would mean that the Committee of Ministers took a political decision to take up the side of one of the parties involved in the conflict (I mean Georgia, Abkhazia and South Ossetia). Creating such situation the Committee of Ministers should clearly realize that this step would follow the closing of any opportunity for the Committee of Ministers and the Council of Europe as an organisation to co-operate with Abkhazia and South Ossetia in any sphere.
>
> As a way out this delegation proposes to delete the paragraph from the Draft Resolution not to overburden the document by the political issues and to avoid misinterpretation.

After the meeting on 19 March 2010, which had heard these two statements, the Representative of Turkey submitted a written statement proposing an amendment to the draft Resolution.[74] The Turkish statement included the following remarks:

> The Turkish delegation wishes to propose an amendment to the draft resolution in respect of Georgia .... Our amendment has been drafted in light of the comments which appear in paras. 83-85 and 184 of the opinion of the Advisory Committee on the implementation of the Framework Convention by Georgia and with a very positive tone which welcomes the steps taken so far by the Georgian authorities with regard to the repatriation of Meskhetian Turks, encouraging them to continue their efforts towards the completion of the repatriation process. We very much hope that this amendment would be acceptable to the Georgian Delegation as well.
>
> In response to the intervention of our Georgian colleague, we would like to underline that our Delegation disagrees with the view that the repatriation of Meskhetian Turks is not relevant to the Framework Convention, and that the draft resolution on the implementation of the Framework Convention by Georgia is not an appropriate format to take up this issue. As we mentioned earlier, the repatriation of the Meskhetian Turks has been dealt with by the Advisory Committee in its opinion and we would also like to remind all delegations of the fact that, in the comments of the Georgian authorities which were submitted in response to the Advisory Committee's opinion, there is no objection to the inclusion of the repatriation of Meskhetian Turks under the scope of the Framework Convention.
>
> We take note of the comment of the Georgian delegation that the draft resolution in respect of this country should be a mere reproduction of the "concluding remarks" of the Advisory Committee's opinion. This being said, we would like to remind that also the Georgian amendment proposals themselves do not appear among the "concluding remarks" of the Advisory Committee's opinion.

74 GR-H Rapporteur Group on human rights GR-H(2010)CB3 add 1 April 2010, Addendum to the synopsis Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB3&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 16.4.2012).

> As opposed to what our Georgian colleague has said, we would like to make it clear that our delegation has never voiced a commitment not to propose any amendment to the draft resolution on Georgia and may I draw the attention of our colleagues that such a commitment is nowhere to find in our statement delivered at the previous meeting of the GR-H on 2 February 2010 and reproduced in the records of that meeting. At that meeting, we were supposed to have an initial exchange of views on the basis of the opinion of the Advisory Committee and I would like to remind that there was no draft resolution by then which could be part of our discussion at that meeting.

The draft text of the Resolution on Georgia which was discussed first on 23 March 2010 is not available. The first available text contains the following wording on the conflict:

> The Georgian authorities and all the parties concerned are encouraged to step up their efforts and to take an open and constructive approach in order to find as soon as possible a just and lasting solution to the conflict over South Ossetia / Tskhinvali region (Georgia) and Abkhazia (Georgia), as the conflict is adversely affecting the implementation of the Framework Convention throughout the entire Georgian territory. In doing so, the principles enshrined in the Framework Convention should be fully respected, in order to guarantee the rights of persons belonging to national minorities.[75]

As noted above, the Russian delegation objected to this paragraph and proposed that it be deleted from the draft Resolution.[76] However, according to the minutes of the 18 May 2010 GR-H meeting, the Russian delegation had proposed an amendment. It is not clear, therefore, what reaction exactly the Russian delegation had made. It is clear, however, that the Russian delegation had objected to a proposal made by the Georgian delegation.[77] During the debate of the 18 May meeting, the Chairman had recognized that there was no doubt, as the ACFC had itself noted in its Opinion, that the disputed post-conflict status of the territories concerned gave rise to practical problems, both for the ACFC in establishing the facts and for the government in carrying out its responsibilities, the Chairman pointed out that as regrettable as it might be that Abkhazia and South Ossetia were not the only provinces or territorial subdivisions in the Council of Europe area to be alienated from the control of the state on whose territory they stand, it had nevertheless been possible, if not easy, to adopt resolutions concerning, for example, Cyprus, Moldova or Azerbaijan.

With regard to the text on the Meskhetian Turks, the disagreement was apparently resolved informally between the Turkish and the Georgian delegations.

Summary

At the time of writing, the CM has yet to adopt a resolution on Georgia's implementation of the FCNM. The case of Georgia is perhaps special due to the 2008 war between Georgia and the Russian Federation. However, the case of Georgia illustrates well the knots and bolts of the political process in terms of both procedure and substance. It shows that the procedure was extremely difficult for the Chairman to steer and that objections and amendments seem to be the accepted behaviour. With regard to substance, it shows that inter-state relations on issues which do not actually pertain to the

75 CM Documents CM(2010)27 corrigendum 22 April 20101, Framework Convention for the Protection of National Minorities – Draft resolution on the implementation of the Convention by Georgia, https://wcd.coe.int/ViewDoc.jsp?id=1613297&Site=DC (accessed 16.4.2012).
76 GR-H Rapporteur Group on Human Rights GR-H(2010)5 corr 17 May 2010, Corrigendum to the annotated agenda Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)5&Language=lanEnglish&Ver=corr&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 16.4.2012).
77 GR-H Rapporteur Group on Human Rights GR-H(2010)CB5 27 May 2010, Synopsis Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 16.4.2012).

implementation of the legal provisions in the instrument can halt a process for considerable time, perhaps for good.

Latvia

Latvia joined the Council of Europe on 10 February 1995 and signed the FCNM on 11 May 1995. With ratification on 6 June 2005, the FCNM went into force on 1 October 2006. The first cycle of monitoring began on 11 October 2006 when Latvia submitted its first State Report.[78] On 9 October 2008, the ACFC issued its first Opinion on Latvia.[79] The government of Latvia submitted comments to the Opinion seven months later on 18 May 2009.[80] The CM Resolution was issued two years later on 30 March 2011. The second cycle of monitoring was set to begin on 1 October 2011.

Procedural aspects

The ACFC Opinion was presented by the President of the ACFC at the GR-H meeting on 18 June 2009. In the call for the meeting, the Chair recalled that the GR-H was expected, in principle, merely to hold an initial exchange of views with the intent to instruct the Secretariat to prepare the next stage of debate, i.e. a draft resolution for consideration by the GR-H and adoption by the Deputies. He also underlined that if it was possible to present the draft Resolution at the same time and with the agreement of the Delegation concerned, he would do so.[81]

During the 18 Jun 2009 meeting, a debate took place after which the Chairman noted that the Secretariat would draft a Resolution in consultation with the states concerned, for examination at a future meeting.[82] He also noted that the interventions of the President of the ACFC would be appended to the minutes of the meeting, as would the declarations by Latvia and the Russian Federation concerning the Opinion on Latvia (see further the section below on substantive issues).

On 11 September 2009, the Secretariat of the FCNM announced that it was continuing its contacts with Latvia with a view to submitting, in good time, a draft Resolution.[83] However, during the 22 September 2009 meeting, the Chairman informed the GR-H that the text was not ready, and that the item would be taken up at the forthcoming meeting.[84] The dialogue with Latvia continued over a

78 Report submitted by Latvia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (received on 11 October 2006), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Latvia (accessed 17.4.2012).
79 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Opinion on Latvia adopted on9 October 2008, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Latvia (accessed 17.4.2012).
80 COMMENTS OF THE GOVERNMENT OF LATVIA ON THE FIRST OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY LATVIA (received on 18 May 2009), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Latvia (accessed 17.4.20120).
81 GR-H Rapporteur Group on human rights GR-H(2009)9 5 June 2009, Annotated Agenda Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
82GR-H Rapporteur Group on human rights GR-H(2009)CB5 24 June 2009, Synopsis Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012)..
83 GR-H Rapporteur Group on human rights GR-H(2009)10 11 September 2009, Annotated Agenda Meeting of 22 September 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
84 GR-H Rapporteur Group on human rights GR-H(2009)CB7 28 September 2009, Synopsis Meeting of 22 September 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-

number of months. On 23 October 2009, the Secretariat informed that it was continuing its contacts with Latvia with a view to submitting, in good time, a draft Resolution.[85] A similar message was issued on 30 November 2009.[86] On 22 January 2010, the Secretariat announced that the examination of the item was postponed to the next meeting.[87] Between January and May 2010 there were no announcements on the Latvia CM Resolution.

On 7 May 2010, the Secretariat announced that it would submit a consolidated information document following consultations with interested delegations.[88] It also drew the members' attention to the fact that it had already submitted a modified text in response to remarks by delegations concerning the repetition of the words "Committee of Ministers" in the initial draft by the Secretariat (see below for text).[89] On 18 May 2010, the Secretariat published the information document summarizing the amendments proposed to the draft Resolution on the implementation of the FCNM by Latvia.[90] The amendments included proposals made by the Delegations of Latvia and the Russian Federation. However, at the 18 May 2010 meeting, the Chairman indicated that he had agreed to a request for informal consultations between interested states.[91] An open-ended meeting would take place on Friday, 21 May 2010.

On 7 June 2010, the GR-H was informed that before the upcoming meeting on 15 June 2010, the Chair or the Secretariat would inform the delegations of the developments in the case.[92] Delegations were invited to inform the GR-H of progress in any bilateral consultations on the draft Resolution. However, during the 15 June 2010 meeting, the Chairman observed that the draft Resolution was still the subject of consultations and noted that its consideration would be postponed to the next meeting.[93] After the summer break, the Secretariat informed the GR-H that, on the basis of the Chair's contacts

H(2009)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

85 GR-H Rapporteur Group on human rights GR-H(2009)12 23 October 2009, Annotated Agenda Meeting of 3 November 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

86 GR-H Rapporteur Group on human rights GR-H(2009)13 30 November 2009, Annotated Agenda Meeting of 10 December 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)13&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

87 GR-H Rapporteur Group on human rights GR-H(2010)1 22 January 2010, Annotated Agenda Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

88 GR-H Rapporteur Group on Human Rights GR-H(2010)5 7 May 2010, Annotated agenda Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2010).

89 Ministers' Deputies CM Documents CM(2010)9 corrigendum 22 April 2010, Framework Convention for the Protection of National Minorities – Draft resolution on the implementation of the Convention by Latvia, https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2010)9&Language=lanEnglish&Ver=corr (accessed 18.1.2012). See Appendix A.

90 -H Rapporteur Group on Human Rights GR-H(2010)6 18 May 2010, Framework Convention for the Protection of National Minorities – Information document: Summary of amendments proposed to the draft resolution on the implementation of the Convention by Latvia, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)6&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

91 GR-H Rapporteur Group on Human Rights GR-H(2010)CB5 27 May 2010, Synopsis Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

92 GR-H Rapporteur Group on Human Rights GR-H(2010)7 7 June 2010, Annotated agenda Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

93 GR-H Rapporteur Group on Human Rights GR-H(2010)CB7 21 June 2010, Synopsis Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

with the delegations concerned, he would inform the Group of the state of progress on the text of the draft Resolution and submit it, where possible or appropriate, for the consideration of the group.[94]

During the 21 September 2010 meeting, the Chairman made a general comment with regard to three country-specific resolutions, Latvia, Poland, and Serbia.[95] They were all subject to bilateral discussion, one of them with the assistance of the Secretariat, the two others without. None of them appeared to be moving forward. In the latter two cases, he noted that there was "no news". Next, he reminded delegations that the FCNM was set up with the specific aim of removing disputes concerning the rights of persons belonging to national minorities from the bilateral sphere, and placing them in a collective inter-governmental context so as to arrive at solutions grounded upon the European *acquis*, the general principles of law which bind the member states together. And he continued that when a delegation indicated a small problem with a text which might most conveniently be resolved by bilateral discussions leading to an agreed text, he was naturally happy to accept the help offered. But in some cases, no agreed text had emerged from this bilateral process, and the months were passing. He recalled that, in the debate at the last meeting concerning the so-called "fall-back" resolution formula, very many delegations objected to the proposal, rightly in his view, because it had seemed to provide the CM with a means of escape from its collective responsibility under the FCNM. He applauded this position, but would now like to see this declared readiness to exercise collective responsibility take some shape in reality. The supervision cycles were beginning to queue up awaiting the determination of the outstanding files. Accordingly, he gave notice of his intention to place certain texts on the agenda of this body whether or not the relevant bilateral negotiations had born fruit.

As to the draft Resolution on Latvia, he reported that the Secretariat had been working with the two delegations concerned on the question since the last meeting and indicated his intention to convene both parties for one further round of face-to-face consultations before coming back to the group on the next possible occasion. Unless any delegation had a comment to make on these remarks, he could see no point in pursuing the debate on these items and proposed to pass to the next.

On 22 October 2010, the GR-H members were informed that during the 2 November 2010 meeting, the Chairman would report on the outcome of further informal consultations with a view to establishing an agreed text and if possible make proposals.[96] During the 2 November 2010 meeting, the Chairman informed the Group that he had recently participated in informal consultations involving representatives of Latvia and the Russian Federation, and had not yet been informed of the reactions of their respective capitals to the proposals.[97] Although the GR-H was soon informed that it would hear about the state of preparation of the draft Resolution following bilateral discussions during the next meeting,[98] the meeting with took place on 7 December 2010 hear the Chairman report that no progress

94 GR-H Rapporteur Group on Human Rights GR-H(2010)9 10 September 2010, Annotated agenda Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
95 GR-H Rapporteur Group on Human Rights GR-H(2010)CB8 27 September 2010, Synopsis Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
96 GR-H Rapporteur Group on Human Rights GR-H(2010)11 22 October 2010, Annotated agenda Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
97 GR-H Rapporteur Group on Human Rights GR-H(2010)CB10 8 November 2010, Synopsis Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
98 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

had been noted since informal consultations between Latvia and the Russian Federation in October.[99] However, during the CM meeting of 30 March 2011, the Latvia Resolution was adopted.[100]

Substantive issues

The substantive issue which upheld the drafting process toward a CM Resolution was the citizenship and naturalization policy adopted by the Latvian government with regard to the Russian speaking population.

The ACFC Opinion presented to the GR-H on 18 June 2009 provided the following remarks and recommendations:

> In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in this regard, the number of "non-citizens" remains particularly high and the lack of citizenship continues to have a detrimental impact on the enjoyment of full and effective equality and social integration. The large number of 'non-citizen' children is a matter of deep concern. Particular efforts are needed in order to promote conditions more conducive to a genuine motivation for naturalisation. The Advisory Committee urges Latvia to address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures to promote naturalisation.[101]

The preliminary remarks were followed by extended comments on the naturalization policy adopted by Latvia and the link between language abilities and naturalization as well as concerns that children are among the non-citizen group of the population. On the basis of the findings, the ACFC Opinion concludes that Latvia needed to adopt a more genuine approach to naturalization.

At the presentation of the Opinion during the meeting of the GR-H on 18 June 2009, the Representative of Latvia and the Russian Federation made statements.[102]

The Representative of Latvia:

> Apart from our detailed comments with regard to the opinion of the Advisory Committee, I will make a short statement.
>
> We thank the Advisory Committee for its expressed recognition regarding our progress in different areas of society integration. We undertake to evaluate accordingly the recommendations and suggestions by the Committee.
>
> Highlighting on several following issues, as summarised in the Committee's executive summary:
>
> I will not delve into details concerning the use of state language, as our arguments are written in the corresponding paragraphs of our comments. Just, to inform that Latvia applies state language requirements in a non-discriminatory and proportional manner and does not regulate the language

99 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
100 CM Documents CM(2011)421 of 18 March 2011, 1110 Meeting, 30-31 March 2011, and and CM/ResCMN(2011)6. See Appendix B.
101 See note 79.
102 GR-H Rapporteur Group on human rights GR-H(2009)CB5 24 June 2009, Synopsis Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

use in the field of private sector, unless the activities of the private sector perform specific public functions or concern public safety.

Latvia has granted citizenship according to the principle of state continuity. Status of a non-citizen has been established to settle the rights of the persons that have come to reside in the territory since the years of occupation. Non-citizens enjoy an exceptionally wide variety of rights and state protection, except for political rights. We must acknowledge that international legal instruments provides and safeguards the sovereign right of the state to determine its political and legal system, and the necessary rights of the content of citizenship accordingly.

Our goal is not to merge the status of citizen with non-citizen, but to motivate people to obtain citizenship through naturalisation. This is a position which has been "taken fully into account" by the Committee of Ministers (adopted last October) in the reply to PACE recommendation (on rights of national minorities in Latvia). We stress that this position is motivated by the specific circumstances, both taking into account the historical situation, the size of the country and the cultivation of the small language, which Latvian obviously is. So far to accomplish this, we have not encountered a better argument than striving for persons acquiring the status of citizenship, which both provides full set of rights, while requiring basic requirements, such as the knowledge of the state language.

The requirements of the naturalisation examination conform to international standards. Latvia has adopted the necessary legislation and has undertaken activities to provide the opportunity for residents of Latvia to attain citizenship. But it is an individual decision to do so, or not. A study of late last year shows that the most common reason for non-citizens not wanting to obtain citizenship is the lack of practical benefit as it is sufficiently convenient to maintain the status of non-citizen – or so considers 74% of non-citizens.

Similarly, I will not go into details about education. Only informatively will point out, that Latvia provides state financed education in 8 minority languages, even where only a small number of children are seeking instruction in a certain language. The quality of education is constantly being monitored and has been maintained at a consistently high level. Bilingual education (or using two languages for instruction) is implemented in state and local authority educational institutions which implement minority education programs. Those graduates of basic and high school education institutions having minority education programs, and who wish to naturalise may have their language proficiency assessed within the centralised Latvian language examination or through the centralised Latvian language and literature examination.

We look forward to the continued dialogue and cooperation with the Advisory Committee in the future.

The representative of the Russian Federation:

The delegation of the Russian Federation welcomes the President of the Advisory Committee on the Framework Convention for the Protection on National Minorities Mr. Phillips and thanks him for the honest and unbiased presentation of the First Advisory Committee Opinion on Latvia.

This delegation shares the majority of assessments made by the Advisory Committee. It should be duly taken into account that the Opinion provided by the Committee is the first one after the ratification of the Convention by Latvia and all the conclusions require the grave attention in order to correct the situation with the rights of persons belonging to national minorities in the country, including the problem caused by Declarations made by Latvia upon ratifying the Convention, and bring it in conformity with the Framework Convention. This delegation believes that in this

situation the Committee of Ministers must raise its voice and defend the European standards established by the Council of Europe in the sphere of protection of national minorities.

The most disturbing issue raised under the first monitoring cycle of Latvia is the exclusion of "non-citizens" (most of them belong to national minorities) out of the scope of application of the Framework convention as a result of Declaration made by Latvia upon ratifying the Convention *(§§ 46-50)*. This leads to the creation of two categories of persons, afforded different degrees of protection within the same ethnic group *(§ 20)*. As the Committee stresses, this situation is problematic from the point of view of the non-discrimination principle *(§ 186)*. This delegation supports the Committee's recommendation to the Latvian authorities to consider other criteria of the scope of application of the Convention such as permanent and legal residence in the country *(§ 48)* as far as "the citizenship criterion raises more problems than other national situations".

It should be stressed that these exceptions affect a very large number of persons (over 370 thousand or around 16 % of the population) and cover key-sectors, including participation in public life and access to jobs and professions in the civil service *(§§ 20, 47)*, which the Committee deems as essential for the protection of persons belonging to national minorities.

It should be mentioned that the Latvian Ombudsman in his report as of September 2008 on the differences in the rights of citizens and non-citizens of Latvia has determined that for the time being there are a number of fields, including right to have property, participation in local elections, labour, etc, where citizens of European Union countries have more rights than non-citizens of Latvia who as a rule have more close ties with Latvia and has no ties with any other country. The Ombudsman recommends to reconsider the scope of non-citizen's rights and their legal interests and to do it each time when the European Union citizens are granted any rights in Latvia. From the Comments of the Latvian Government follows that the authorities are fully aware of this report but prefer to ignore such kinds of recommendations and focus only on the conclusions that confirm their rectitude.

The Government of Latvia in its Comments on the opinion of the Advisory Committee explains the exclusion of such a huge number of persons out of the application of the Convention by the aim to encourage naturalisation and increase the number of citizens of Latvia. It should be stressed that this is exactly to what Latvia was called on by many international bodies. But all these international bodies advise the Latvian authorities other methods than restrictions. By the way the Latvian Ombudsman in the mentioned report bases himself on this aim too but as we see the conclusions are different. More than that Latvia prefers to put responsibility of decreasing of rate of naturalisation on other sides, for example on the Russian Federation because of easing travelling to Russia for non-citizens, than to examine the real reasons of the situation and for the beginning to ease the linguistic requirements for the naturalisation *(§ 87)* and to create the climate more favourable for naturalisation which is not the case in Latvia *(§ 89)*.

The Committee of Ministers must send a clear message to the Latvian Government that discrimination is not a proper way to encourage naturalisation. Recommendations of the Advisory Committee, in particular to include non-citizens in the scope of application of the Framework Convention, to widen their rights in the field of access to jobs and professions, to promote their participation in the public life, to take steps to accelerate teaching of the state language instead of strengthening linguistic requirements, to ease the linguistic requirements for the naturalisation, and to create in the society a climate more favourable to naturalisation, should be included in the CM Resolution on implementation of the Framework Convention by Latvia.

This delegation supports the deep concerns of the Advisory Committee in respect of ensuring the rights of persons belonging to national minorities to use their native languages in private and public life.

The Latvian authorities should give the proper attention to the concerns spoken out by other international intergovernmental and non-governmental organisation about that fact that since the reform of the Latvian education system in 2003 and despite strong opposition from the national minorities, more restrictive language conditions have been placed on the education provided for minorities *(§ 138)*. The disturbing trend of decreasing of the education on national minorities' languages is increasing. There are also initiatives to provide for compulsory use of Latvian in private universities *(§ 149)*, which contradicts the certain provisions of the Framework Convention.

Concerning the right to use minority languages in relations with local administrations provided by the Framework Convention there is no opportunity for national minorities in Latvia to enjoy this right *(§ 112)* because of the Declaration to the Article 10, paragraph 2 made by Latvia upon ratifying the Framework Convention. It should be stressed that in the last few years Latvian governments was urged by several international bodies and by the Latvian Ombudsman to authorise "non-citizens" to vote in local elections, but all these recommendations were ignored.

The representatives of national minorities face serious difficulties in the sphere of labour because of language requirements for 3,5 thousands public-sector occupation and over one thousand professions in private sector *(§ 101)*. Special measures should be taken to correct this situation.

It is regrettable that instead of seeking the ways of improving the teaching of Latvian, improving the integration of national minorities and ensuring their rights in accordance with the obligations taken under the international treaties, the Latvian Government aims at the toughening of language requirements. The disturbing trend should be reconsidered when the funding for coercive mechanisms of supervision of the language requirements fulfilling is increasing and simultaneously the funds allocated to teaching of Latvian is reducing *(§ 106)*.

In this respect it is important to draw the attention of the Latvian authorities to the Advisory Committee's opinion that "authorising the use of minority language, in addition to Latvian, in different circumstances in which the conditions set out in the Framework Convention are met, does not affect in any way the compulsory status of the State language" *(§ 110)*. On the contrary, all the measures aimed at respect of the rights of persons belonging to national minorities, including the language-related rights, encourage these persons to integrate and show them the support and respect of the state.

Unfortunately, despite all the finding and conclusions made by the Advisory Committee the Comments of the Latvian Government make an impression that the authorities are convinced that everything is all right with the ensuring of national minorities' rights in the country. Regrettably, the authorities show no intention to look closer on the situation, to stop to just ignore the recommendations and to begin to proceed from the interests of people living in the state and to guarantee their rights. Nevertheless this delegation would like to encourage Latvia to continue the close dialogue with the Advisory Committee and representatives of the national minorities in order to resolve all the outstanding issues raised by the Committee and to fulfil its recommendations.

At the end of my statement I would like to remind you of our recent exercise on elaboration of CM Reply to Parliamentary Assembly Recommendation 1772 (2006) "Rights of national minorities in Latvia". As you might remember then the delegation of the Russian Federation proposed the number of amendments in order to reflect the real situation in Latvia. But they were not supported. Now we have the Opinion of the Advisory Committee on Latvia in front of us and it confirms the concerns that were raised that time by this delegation but were put aside.

The Committee of Ministers has to choose now on which side it will be: will it take part of the Latvian authorities with its "no problem" position or it will stand on the side of people whose rights

> are violated, who are without citizenship for already 18 years and will defend human rights by giving the clear message to the Latvian authorities that the situation is unacceptable from the point of view of implementation of the Framework Convention and there is urgent need to change it.

The draft Resolution on Latvia intended for but not discussed by the GR-H on 18 May 2010 contained the following paragraph regarding citizenship and naturalization:

> In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in this regard, the number of "non-citizens" remains high and the lack of citizenship continues to have a detrimental impact on the enjoyment of the full and effective equality and social integration. The considerable number of children born in Latvia after 21 August 1991 who are still 'non-citizens' is a matter of deep concern. Particular efforts are required in order to promote conditions more conducive to a genuine motivation for naturalisation. Latvia should address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures to promote naturalisation.[103]

The final Resolution on Latvia's implementation of the FCNM adopted by the CM on 30 March 2011 contained the following paragraph on citizenship and naturalization:

> In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in this regard, the number of "non-citizens" remains high and the lack of citizenship continues to have a detrimental impact on the enjoyment of the full and effective equality and social integration. The considerable number of children born in Latvia after 21 August 1991 who are still 'non-citizens' is a matter of deep concern. Particular efforts are required in order to promote conditions more conducive to a genuine motivation for naturalisation. Latvia should address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures, including further language-training for the persons concerned, to promote naturalisation.[104]

The sentence to note here is the last one which in the final text includes a reference to language-training with the view to promote naturalization.

Summary

The political process on the Latvian Resolution indicates again that inter-state relations seem to be the problem upholding the process. This time, however, it could be argued that the inter-state relations pertain directly to the implementation of the FCNM provisions by the Latvian government. The inter-state issues between Latvia and the Russian Federation with regard to the naturalization and citizenship of the Russian speaking minority are therefore – unlike the case of Georgia, where the disagreement pertained to the views on the 2008 conflict – directly related to the kin-state relationship between Russia and the Russian minority in Latvia. As it turns out, the substantive issue was in fact language-training because the final text of the Resolution included a specific reference to language-training for the purpose of naturalization, i.e. language-training in the Latvian language. This seem to indicate that Latvia might have succeeded in having this inserted since Latvian language training is considered necessary in order to obtain citizenship in Latvia. On the procedural side, it is interesting to note that between 7 December 2010, when the Chairman reported that no progress had been recorded since informal consultations between Latvia and the Russian Federation in October of 2010, and March 2011 a draft resolution text was agreed upon and eventually adopted. There are no records of

103 Framework Convention for the Protection of National Minorities – Draft resolution on the implementation of the Convention by Latvia Ministers' Deputies, CM Documents CM(2010)9 corrigendum 22 April 2010. See note 89.
104 Ministers' Deputies CM Documents CM(2011)421 18 March 2011. See note 100.

informal meetings taking place during this October 2010-March 2011 period. We do know that a text was submitted to the central governments of Latvia and the Russian Federation in November 2010. These might have produced the agreement. Nevertheless, the Latvian process seems to indicate that kin-state relations are clearly an obstacle in a multi-lateral co-operation that is supposed to be based on deference to higher moral standards.

Lithuania

Lithuania joined the Council of Europe on 14 May 1993 and signed the FCNM on 1 February 1995. With ratification on 23 March 2000, the FCNM went into force on 1 July 2000. The first cycle of monitoring saw a very swift process with submission of first state report on 31 October 2001 and adoption of the CM Resolution on 10 December 2003. The political process from Opinion to Resolution took 10 months. The monitoring under the second cycle began on 3 November 2006 when Lithuania submitted its second state report.[105] On 28 February 2008, the ACFC issued its second Opinion on Lithuania.[106] The government of Lithuania submitted comments to the Opinion eight months later on 20 October 2008.[107] No CM Resolution has been issued to date. The third cycle of monitoring began on 21 September 2011 with the arrival of the third state report.

Procedural aspects

The ACFC Opinion on Lithuania was presented by the President of the ACFC to the GR-H on 28 October 2008. As in the case of Latvia, the Chair recalled that the GR-H was expected, in principle, to hold an initial exchange of views on the Opinion, with a view to instructing the Secretariat to prepare the next stage in its debate, i.e. a draft resolution for consideration by the GR-H and adoption by the Deputies, unless it is possible to present the draft resolution, with the agreement of the Delegation concerned, at the same time.[108] During the meeting, the Representatives of Lithuania and Poland made declarations (see further section on substantive issues). After the discussions, the Chairman noted that the GR-H would revert to the Opinion on Lithuania at one of its forthcoming meetings in the light of a draft resolution to be prepared by the Secretariat in consultation with the delegations concerned.[109] However, the call for the GR-H's next meeting did not refer to Lithuania.[110] Nevertheless, during the meeting which took place on 9 December 2008, the Chairman indicated that the text as agreed by the Lithuanian authorities had been received only that day, and accordingly he proposed that examination

105 SECOND REPORT SUBMITTED BY LITHUANIA PURSUANT TO ARTICLE 25, PARAGRAPH 2 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Received on 3 November 2006, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Lithuania (accessed 17.4.2012).

106 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, Second Opinion on Lithuania Adopted on 28 February 2008, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Lithuania (accessed 17.4.2012).

107 COMMENTS OF THE GOVERNMENT OF LITHUANIA ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY LITHUANIA (received on 20 October 2008), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Lithuania (accessed 17.4.2012).

108 GR-H Rapporteur Group on Human Rights GR-H(2008)24 17 October 2008, Annotated Agenda Meeting of 28 October 2008, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2008)24&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

109 GR-H Rapporteur Group on Human Rights GR-H(2008)CB13 4 November 2008, Synopsis Meeting of 28 October 2008, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2008)CB13&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

110 GR-H Rapporteur Group on Human Rights GR-H(2008)29 rev 1 December 2008, Annotated Agenda Meeting of 9 December 2008, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2008)29&Language=lanEnglish&Ver=rev&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

of the draft Resolution on Lithuania be agenda-sat for the next meeting of the group. This was agreed.[111]

In the call for the next meeting on 3 February 2009, the GR-H was invited to examine the draft resolution text with a view to approving it and submitting it to the Deputies at a future meeting for adoption without further debate.[112] During the 3 February 2009 meeting, the Chairman noted that following a proposal for amendment by the Polish delegation, this amendment would be circulated to all delegations as quickly as possible.[113] Should there be no comments from delegations after one week, it would be understood that the text was acceptable and the draft resolution as amended could be submitted to the CM Deputies at one of their forthcoming meetings with a view to adoption without further debate. Should this not be the case, the draft resolution in respect of Lithuania would be reconsidered at the next meeting of the GR-H on 10 March 2009 on the basis of a revised text to be prepared by the secretariat.[114] The Chairman further underlined that if the delegations respected the practice according to which proposals for amendment were issued in writing sufficiently in advance of meetings for delegations to evaluate them and if necessary obtain instructions, it would contribute greatly to the effectiveness of the Rapporteur Group's work.

During the 10 March 2009 meeting, the Chairman recalled that at the last meeting, the Polish delegation had submitted an amendment which first proposed to enumerate a number of draft laws of relevance for national minorities to be adopted by Lithuania and secondly enjoined the Lithuanian Parliament to do so as soon as possible.[115] He suggested a compromise according to which the first proposal, slightly revised (to mention issues/fields of action instead of naming specific laws), should be accepted, and the second rejected. After debate, it was agreed that it could be acceptable to all delegations if, instead of enumerating draft laws, the text were to indicate the paragraphs of the opinion corresponding to the envisaged reforms. It was agreed that, if no objection were received within one week of the issue of the revised text, the matter could be submitted to the Deputies at a forthcoming meeting.

However, according to the call for the next meeting on 18 June 2009, the Chairman's suggested compromise according to which the first proposal, slightly revised (to mention issues/fields of action instead of naming specific laws), should be accepted, and the second rejected, was rejected by one delegation.[116] The GR-H was therefore invited to pursue further its examination of this item during the upcoming meeting. The rejecting delegation stood its ground during the meeting on 10 March, which lead the Chairman to indicate that the only course of action open to him would be to submit the matter, including the proposed amendment, for determination by the CM Deputies at a forthcoming meeting.

111 GR-H Rapporteur Group on Human Rights GR-H(2008)CB15 11 December 2008, Synopsis Meeting of 9 December 2008, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2008)CB15&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

112 GR-H Rapporteur Group on Human Rights GR-H(2009)2 23 January 2009, Annotated Agenda Meeting of 3 February 2008, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012). See Appendix A.

113 As noted earlier, amendments are not usually available to the public.

114 GR-H Rapporteur Group on Human Rights GR-H(2009)CB1 9 February 2009, Synopsis Meeting of 3 February 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

115 GR-H Rapporteur Group on human rights GR-H(2009)4 27 February 2009, Annotated Agenda Meeting of 10 March 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012), and GR-H Rapporteur Group on human rights GR-H(2009)CB2 16 March 2009, Synopsis Meeting of 10 March 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

116 GR-H Rapporteur Group on human rights GR-H(2009)9 5 June 2009, Annotated Agenda Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

He reminded the delegation proposing the amendment that it would have the possibility, if appropriate, to submit a declaration for the records on that occasion.[117]

For the next twelve months, the draft CM Resolution on Lithuania was not on the agenda of the GR-H. Public records about the process to draft a Resolution have not been found from mid 2009 to September 2010. And the agenda for the GR-H's meeting in September 2010 did not indicate any progress on the draft Resolution for Lithuania.[118]

However, during the GR-H meeting of 21 September 2010, the Chairman raised the issue of Lithuania in connection with an extended remark regarding the long drafting periods (see above under the section on Latvia). On the agenda was the draft Resolutions for Latvia, Poland and Serbia all of which had seen some delays due to bilateral discussions, one of them with the assistance of the secretariat, the two others without.[119] When a delegation indicated a small problem with a text which might most conveniently be resolved by bilateral discussions leading to an agreed text, he was naturally happy to accept the help offered. But in some cases, no agreed text had emerged from this bilateral process, and the months were passing. Accordingly, he indicated his intention to place certain texts, not least that on Lithuania which had been before the GR-H since February 2009, on the agenda of this body whether or not the relevant bilateral negotiations had born fruit. Hence, Lithuania made it on to the agenda for the GR-H's December meeting.[120]

During the 7 December 2010 meeting, the Lithuanian delegation reported that progress had been achieved in bilateral consultations on the draft Resolution, and the Chairman noted that he hoped that the matter could be taken up for discussion at a forthcoming meeting with a view to identifying a consensus.[121] This is the last development recorded on the Lithuanian draft. Documents for most of 2011 are not yet available to the public.

Substantive issues

The substantive issues holding up the finalization of the CM Resolution on Lithuania are yet again kin-state related. This is clear from the declaration offered by the Polish delegation in connection with the presentation of the ACFC Opinion in the GR-H on 28 October 2008 (see below). Issues pertaining to a number of areas of concern to Poland were raised, including language and name use in the public sphere, as well as census issues. In particular the legal protection in these areas was highlighted.

The ACFC Opinion presented to the GR-H on 28 October 2008 contained the following concluding remarks on the legal aspect of minority protection:

117 GR-H Rapporteur Group on human rights GR-H(2009)CB5 24 June 2009, Synopsis Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
118 GR-H Rapporteur Group on Human Rights GR-H(2010)9 10 September 2010, Annotated agenda Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
119 GR-H Rapporteur Group on Human Rights GR-H(2010)CB8 27 September 2010, Synopsis Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
120 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
121 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

> The legal framework for the protection of persons belonging to national minorities lacks clarity and consistency. The fact that provisions of the Law on National Minorities in force cannot be implemented in practice remains a source of serious concern. Legal uncertainty persists in particular as regards the implementation of important principles of the Framework Convention relating to the use of minority languages in the public sphere, where the Law on the State Language imposes the compulsory use of Lithuanian. Certain judgments adopted by Lithuanian courts on the use of minority languages are disconcerting as they have not taken due account of other laws protecting national minorities, the relevant provisions of the constitution and of the Framework Convention.[122]

The first recommendation offered by the ACFC in the Opinion therefore relates to the insecure legal framework on minority rights in Lithuania. The two statements made by the representatives of Lithuania and Poland, respectively, show that the issue is in need of addressing:[123]

The Representative of Lithuania:

> First of all I would like to thank the Advisory Committee for its work and for the Opinion on Lithuania that was prepared. Lithuania seriously addresses the issues of national minorities. The policy of the Government aims at social cohesion of all nationalities living in Lithuania. It seeks further to apply norms and principles of Framework Convention in the broadest sense, taking into account all social, political and historical aspects.
>
> Budget allocations assigned to the cultural and educational projects of non-governmental organisations, and activities of the cultural centres of national minorities have been increased each year. Lithuania is making efforts to promote mutual respect, understanding and dialogue among all persons living on the territory of Lithuania. In the strategy for the development of the national minorities policy until the year 2015 a goal is set – to ensure the harmony of national relationships. To achieve this goal Lithuania seeks to instil trust and mutual understanding between persons belonging to different national groups; to foster tolerance; to improve the policy for fighting against racism and national discrimination; to ensure the dissemination of information about the policy of the Lithuanian national minorities.
>
> I would like to inform that in Lithuania, persons belonging to national minorities are provided with the possibilities to receive information in the minority languages: radio and television programs are broadcasted, newspapers are published, and internet-informational sites are operating.
>
> For sure Lithuania's Government shares the concern about the situation of Roma community in Lithuania. In March this year the program on Roma integration into the Lithuanian society for the years 2008-2010 was adopted. The main goal of this program is to foster public tolerance to Roma and trust in them. I would also like to mention that education of Roma is a priority task of the program for the integration of Roma into the Lithuanian society.
> In the end I would like to say that Lithuania appreciates an interactive dialog that is established with the Committee and is open for further constructive discussion for improving situation of national communities living in Lithuania.

The Representative of Poland:

> The Committee in its opinion assessed rather positively the overall situation of national minorities in Lithuania and noticed further improvements of the implementation of the Framework Convention for the Protection of National Minorities since 2003. The Polish Government does not entirely share this optimistic opinion. In some cases we have not observed any improvement since

122 See note 106.
123 See note 109.

2003. Nevertheless, we are ready to discuss all the outstanding issues in the spirit of friendly relationship and mutual understanding with our Lithuanian neighbours.

Coming to specific items, the major problems of the Polish minority reflected in the report are:

a. Use of minority language in relations with administrative authorities (Article 10),
b. Use of surnames and names in minority languages (Article 11),
c. Education in minority language (Article 12)

a. Use of minority language in relations with administrative authorities (Article 10)

The Polish Government agrees with the Committee's opinion expressed in paragraphs 20, 99 and 100 about the persisting legal uncertainty as regards the use of minority languages in the public sphere. There are two divergent legislative provisions. One is the Law on National Minorities which authorises the use of minority language in relation with local administrative authorities. The second is the Law on the State Language according to which the use of the Lithuanian language is compulsory in the public sphere. The Lithuanian authorities rely in this context on the Law on the State Language. As a result, the use of minority language in public life is gradually decreasing.
Against this background we do not see positive developments concerning the implementation of Article 10 of the Framework Convention. In paragraph 97 the Committee refers to the draft of the new Law on the State Language currently being examined in the Parliament. This draft has been under examination already since 2005. It is hardly possible to consider it as a positive development.

b. Use of surnames and names in minority languages (Article 11)

The issue of transcribing surnames and first names of persons belonging to minorities is still outstanding. The draft law on the writing of surnames and first names in identity documents has been under examination by the Parliament since 2005.
We share the concerns expressed by the Committee in paragraph 110, 111 and 112 concerning the persisting problems with regard to the use of minority languages for bilingual topographical indications. The legal uncertainty with regard to the topographical indications and other inscriptions should be resolved.

c. Education in minority language (Article 12)

With respect to the education in minority languages, the Committee noted in paragraph 22 of its opinion, the difficulties of the minority schools – among them the diminishing number of such schools as well as the insufficient funds allocated to these schools in accordance with the "pupil's basket". The Committee does not however specify what the concrete problems are.

Population census

Polish authorities welcome some positive developments in Lithuania presented in the Committee's opinion, like i.a. paragraph 36 on the new population census. We noted with satisfaction that when the previous census was carried out, the forms were also available in two minority languages. We also welcome the declaration that this positive practice will be continued during the census in 2010. However we would like to bring to the attention of the Committee the fact that according to the information from the Polish national minority organisation, there will be no optional question on the ethnic origin and language of the interviewees in the new population census.

In conclusion, as it arises from the Committee's opinion there are still a lot of outstanding issues that have to be resolved. We encourage the Lithuanian authorities to continue the dialogue with the Committee in this regard. We would also like encourage the Government of Lithuania to consult the minority organisations during the process of preparation of the next State report on the implementation of the Framework Convention.

The draft Resolution on Lithuania presented to the GR-H for discussion on 3 February 2009 contained the following identical paragraph on the legal framework for minorities in Lithuania as the ACFC Opinion:

> The legal framework for the protection of persons belonging to national minorities lacks clarity and consistency. The fact that provisions of the Law on National Minorities in force cannot be implemented in practice remains a source of serious concern. Legal uncertainty persists in particular as regards the implementation of important principles of the Framework Convention relating to the use of minority languages in the public sphere, where the Law on the State Language imposes the compulsory use of Lithuanian. Certain judgments adopted by Lithuanian courts on the use of minority languages are disconcerting as they have not taken due account of other laws protecting national minorities, the relevant provisions of the Constitution and of the Framework Convention.[124]

According to the Chair of the GR-H, a proposal for amendments submitted by Poland at the early stage in the drafting of the Resolution suggested deficits in specific legislation under consideration by the Lithuanian government. Although the proposal is not publicly available it is recalled that during the 10 March 2009 meeting, the Chairman had noted that the Polish delegation had submitted an amendment which first proposed to enumerate a number of draft laws of relevance for national minorities to be adopted by Lithuania and secondly enjoined the Lithuanian Parliament to do so as soon as possible.[125] The same meeting had reached consensus on the fact that it could be acceptable to all delegations if, instead of enumerating draft laws, the text would indicate the paragraphs of the opinion corresponding to the envisaged reforms.

Summary

The pattern of kin-state issues dominating the political process is now becoming clearer. This time the kin-state actions of Poland were so explicit that other delegations seem to have become uncomfortable. The fact that the Polish proposal for amendments apparently enumerated specific draft laws and made a direct plea to the Lithuanian Parliament to adopt laws on national minorities was a step too far for the members of the GR-H and the language was softened accordingly. Notwithstanding that the issue at stake in Lithuania may be minority legislation and that the Lithuanian declaration made during the first meeting when the President of the ACFC presenting the Opinion on Lithuania did not refer to any legal matters, the Polish behaviour in this process clearly went beyond the principles of state sovereignty and non-interference in international law. One might argue that while the intentions of the Polish proposal were most likely made in good faith, seeking to propose good laws, the outcome of the proposal – if approved – would have violated the accepted procedural rule guiding the FCNM.

Poland

Poland joined the Council of Europe on 26 November 1991 and signed the FCNM on 1 February 1995. With ratification on 20 December 2000, the FCNM went into force on 1 April 2001. The first cycle of monitoring saw a very swift process with submission of first state report on 10 July 2002 and adoption of the CM Resolution on 30 September 2004. The political process from Opinion to Resolution took ten months. The monitoring under the second cycle began on 8 November 2007 when

124 Framework Convention for the Protection of National Minorities Draft resolution on the implementation of the Convention by Lithuania Ministers' Deputies / Rapporteur Groups GR-H Rapporteur Group on Human Rights GR-H(2009)1 13 January 2009. See Appendix A.
125 See note 115.

Poland submitted its second state report.[126] On 20 March 2009, the ACFC issued its second Opinion on Poland.[127] The government of Poland submitted comments to the Opinion eleven months later on 7 December 2009.[128] No CM Resolution has been issued to date. The third cycle of monitoring is due to begin 1 April 2012.

Procedural aspects

The ACFC Opinion on Poland was presented by the President of the ACFC to the GR-H on 2 February 2010. As usual, the Chair recalled that the GR-H was expected, in principle, to hold an initial exchange of views on the Opinion, with a view to instructing the Secretariat to prepare the next stage in its debate, i.e. a draft resolution for consideration by the GR-H and adoption by the CM Deputies, unless it is possible to present the draft resolution, with the agreement of the Delegation concerned, at the same time.[129] During the meeting, the Representatives of Poland and Lithuania made statements.[130] The Chair indicated that these would be made public as an addendum to the minutes of the meeting. To date they have not been made public.

Next time the draft resolution for Poland was on the agenda was for the meeting of the GR-H on 23 March 2010.[131] During the meeting the Chair informed the GR-H that due to the late submission of amendments by a delegation, the consideration of the draft resolution would have to be postponed to a future meeting.[132] On 1 April 2010, the Secretariat announced that during the next meeting on 15 April 2010, the Chairman would hold a debate if the text of the Polish Resolution was ready in time for the meeting, in which case the GR-H would be invited to examine the draft resolution with a view to approving it and submitting it to the CM Deputies at a future meeting for adoption without further debate.[133] During the 15 April meeting, he Chairman indicated that he had agreed to a request for further time for informal consultations between interested states.[134] For the following meeting, the Chairman put his hopes that the bilateral consultations undertaken since the last meeting would result in an agreement on the text.[135] Unfortunately, this was not to be the case.

126 SECOND REPORT SUBMITTED BY PORTUGAL PURSUANT TO ARTICLE 25, PARAGRAPH 2 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (Received on 14 January 2009), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland (accessed 17.4.2012).

127 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Second Opinion on Poland, adopted on 20 March 2009, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland (accessed 17.4.2012).

128 COMMENTS OF THE GOVERNMENT OF POLAND ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY POLAND (received on 7 December 2009), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland (accessed 17.4.2012).

129 GR-H Rapporteur Group on human rights GR-H(2010)1 22 January 2010, Annotated Agenda Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

130 GR-H Rapporteur Group on human rights GR-H(2010)CB1 8 February 2010, Synopsis Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

131 GR-H Rapporteur Group on human rights GR-H(2010)2 12 March 2010, Annotated Agenda Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

132 GR-H Rapporteur Group on human rights GR-H(2010)CB3 29 March 2010, Synopsis Meeting of 23 March 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

133 GR-H Rapporteur Group on Human Rights GR-H(2010)4 1 April 2010, Annotated agenda Meeting of 15 April 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

134 GR-H Rapporteur Group on Human Rights GR-H(2010)CB4 20 April 2010, Synopsis Meeting of 15 April 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

135 GR-H Rapporteur Group on Human Rights GR-H(2010)5 7 May 2010, Annotated agenda Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-

During the 18 May 2010 meeting, the Chair noted that bilateral consultations since the last meeting had not yet resulted in an agreement on this text.[136] The Chair's exasperation began to show in the call for the 15 June 2010 meeting, when he announced that delegations are invited to inform the Group of progress in any bilateral consultations on the respective draft resolutions.[137] However, during the meeting, the Chair had to announce that the draft resolution on Poland was still the subject of consultations, and that the GR-H's consideration would be postponed to the next meeting.[138]

Before the next meeting, the Chair engaged directly with the consulting delegations, and on the basis of that the Secretariat announced that he hoped to be able to inform about progress in the process.[139] The next meeting, which took place on 21 September 2010, began with a general discussion on the obstacles to the political process opened by the Chairman (see the section on Latvia). However, with regard to the draft Resolution on Poland, the Chair could only report that there was no news.[140] The delegations in question were therefore invited to report directly to the GR-H at the following meeting.[141]

At the following meeting on 2 November 2010, the Chairman was nevertheless able to report that he had been informed by the Polish delegation that there was progress made on the negotiations on the draft text, which was now the object of '*unmoderated* bilateral consultations.'[142] He also took the opportunity to recall the remarks made earlier by the President of the ACFC concerning the aim of the FCNM, namely to remove the resolution of differences concerning the rights of national minorities from the bilateral context in favour of an inter-governmental platform, and urged those involved to lose no time in concluding their discussions.

The Polish draft was not on the agenda for the following meeting,[143] and an informal meeting on 31 January 2011 apparently did not produce any break-through. At the official meeting on 3 February 2011, the Representatives of Poland and Lithuania indicated that their differences regarding the Polish

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H(2010)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

136 GR-H Rapporteur Group on Human Rights GR-H(2010)CB5 27 May 2010, Synopsis Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

137 GR-H Rapporteur Group on Human Rights GR-H(2010)7 7 June 2010, Annotated agenda Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

138 GR-H Rapporteur Group on Human Rights GR-H(2010)CB7 21 June 2010, Synopsis Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

139 GR-H Rapporteur Group on Human Rights GR-H(2010)9 10 September 2010, Annotated agenda Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

140 GR-H Rapporteur Group on Human Rights GR-H(2010)CB8 27 September 2010, Synopsis Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

141 GR-H Rapporteur Group on Human Rights GR-H(2010)11 22 October 2010, Annotated agenda Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

142 GR-H Rapporteur Group on Human Rights GR-H(2010)CB10 8 November 2010, Synopsis Meeting of 2 November 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012), my emphasis.

143 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

text had so far proved irreconcilable.[144] They accepted, however, the Chairman's invitation to make one further effort to achieve an agreed position before the text returned to the agenda of the GR-H at its next meeting for a general discussion. Another informal meeting on 17 February 2011 followed. The process beyond this date remains restricted, and at the time of writing no resolution has been adopted by the CM.

Substantive issues

It is not possible to identify substantive issues that have stalled the process on the Resolution on Poland. It is known that statements and proposals by the Polish and the Lithuanian delegations have been made. These have not, however, been made public yet. The ACFC Opinion on Poland presented to the GR-H by the President of the ACFC at the Group's meeting on 2 February 2010 contained a number of recommendations on various issues, such as racially motivated offences, census issues, intolerance and xenophobia, Roma discrimination and dialogue issues.[145] The Opinion does not address any explicit kin-state issues, except for one reference to reciprocity:

> There are concerns about obstacles created at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, and the conditioning of respect for minority rights on reciprocity in neighbouring countries.[146]

The ACFC explains this concern in detail in the main text of the Opinion:

> The Advisory Committee has been informed, in particular by representatives of the Lithuanian and Ukrainian minorities, that certain local representatives continue to make provocative statements, conditioning respect for minority rights on reciprocity to be applied to the "kin-minority" by the neighbouring State, or by the local authorities on the other side of the border. The Advisory Committee finds such practices unacceptable and recalls in this context that it is every State Party's obligation to apply the Framework Convention in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States, and that in no circumstances should policies in respect of national minorities be contingent on inter-State relations.[147]

The draft Resolution on Poland, which was made available for the GR-H prior to the meeting of 23 March 2010 contained identical issues.[148] On the issue of reciprocity, the draft Resolution followed the line of the Opinion:

> There are concerns about reported instances of obstacles at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, conditioning respect for minority rights on reciprocity in neighbouring countries, or by the local authorities on the other side of the border.[149]

144 GR-H Rapporteur Group on Human Rights GR-H(2011)CB2 9 February 2011, Synopsis Meeting of 3 February 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
145 See note 127.
146 Opinion, Executive Summary, paragraph 7. See note 127.
147 Opinion, section 81. See note 127.
148 Framework Convention for the Protection of National Minorities – Draft resolution on the implementation of the Convention by Poland Ministers' Deputies CM Documents CM(2010)21 2 March 2010. See also Appendix A.
149 Draft resolution, section 1, b.

Summary

Although inter-state relations are not confirmed in the case of the Resolution on Poland due to the lack of public documents, the available texts do hint the inter-state approach on the notion of kin-state issues as in the case of Latvia and Lithuania. The substantive issue here is odd in that it focuses on reciprocity. However, the reference is to bordering countries in plural thus leaving some doubt about recurrent bilateralism. Nevertheless, the procedural part of the process clearly indicates that intense consultations have taken place albeit not clear as to the extent of lateralism.

It should be noted that the general debate on the so-called "fall-back resolution" took place during the first months of 2011 during the same time as the Chairman was seeking to find a resolve to the draft Resolution on Poland. Moreover, the draft resolutions on Poland and Lithuania were discussed in tandem perhaps creating some influence on the resolve of either case.

Serbia

Serbia joined the Council of Europe on 3 April 2003 but had acceded to the FCNM already on 11 May 2001 before becoming a member. The FCNM thus went into force on 1 September 2001. The first cycle of monitoring saw a very swift process with submission of first state report on 16 October 2002 and adoption of the CM Resolution on 17 November 2004. The political process from Opinion to Resolution took twelve months. The monitoring under the second cycle began on 4 March 2008 when Serbia submitted its second state report.[150] On 19 March 2009, the ACFC issued its second Opinion on Serbia.[151] The government of Serbia submitted comments to the Opinion seven months later on 26 October 2009.[152] The CM Resolution was adopted on 30 March 2011, two years after the ACFC Opinion. The third cycle of monitoring is due to begin 1 September 2012.

Procedural aspects

The President of the ACFC presented the second Opinion on Serbia to the GR-H during its meeting on 2 February 2010.[153] Unfortunately, the Chairman had to postpone the discussion to a future meeting due to lack of time. The Opinion on Serbia was therefore presented on 18 May 2010.[154] During the meeting, the delegations of Croatia, Romania, Hungary and Serbia intervened in the discussion.

One delegation indicated its disagreement with the draft text as regards the situation of a specific minority, and its intention to present draft amendments after the meeting. This delegation asked why the draft Resolution on Serbia had been presented at the same meeting at which the Opinion had been presented, but none of the other three, which suggested discrimination. In reply, the Secretariat recalled that the President of the ACFC had intended to present the Opinion on Serbia during his last intervention before the GR-H, but had been prevented from doing so for lack of time. The Secretariat

150 SECOND REPORT SUBMITTED BY SERBIA PURSUANT TO ARTICLE 25, PARAGRAPH 2 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Received on 4 March 2008, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Serbia (accessed 17.4.2012).
151 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Second Opinion on Serbia adopted on 19 March 2009, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Serbia (accessed 17.4.2012).
152 COMMENTS OF THE GOVERNMENT OF SERBIA ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY SERBIA (received on 30 September 2009), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Serbia (accessed 17.4.2012).
153 GR-H Rapporteur Group on human rights GR-H(2010)CB1 8 February 2010, Synopsis Meeting of 2 February 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
154 GR-H Rapporteur Group on Human Rights GR-H(2010)CB5 27 May 2010, Synopsis Meeting of 18 May 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

had drafted and issued the text in order not to lose time. The Secretariat added that, in the past, it had issued on some occasions draft resolutions simultaneously with the presentation of the Opinion. The representative of the delegation which had asked the question declared himself dissatisfied with the information given.

The Chairman concluded that the draft Resolution on Serbia would need to be re-examined at a forthcoming meeting in the light of the amendments to be submitted after the meeting, and invited the delegations concerned to come to an agreement on the matter. He further noted that the interventions of the delegations having requested inclusion in the Records would be issued in an addendum to the synopsis. This did not, however, happen and to date these are not published.

The next time the draft Resolution on Serbia was on the agenda was for the meeting of the GR-H on 15 June 2010.[155] In the call for the meeting, the Secretariat invited delegations to inform the Group of progress in any bilateral consultations on the draft Resolution. During the meeting, the Chair informed the GR-H that the draft Resolution on Serbia was still subject of consultations and would therefore have to be postponed to the next meeting.[156] Before the next meeting, the Chairman took contact to the delegations involved with the view to update on the process.[157] The meeting of 21 September 2010 was destined to take the next discussion on the draft Resolution on Serbia. This is the meeting which, as reported above in the case of Latvia, Lithuania and Poland had heard the Chairman raise the issue of delegations delaying the process unduly (see section on Latvia).[158] After the discussion on the delayed processed, the Chair noted that he had been given to understand that the bilateral discussions between Romania and Serbia concerning the draft Resolution on Serbia had made progress and looked forward to being informed in more detail so that the GR-H might be invited to pronounce itself soon.

During the GR-H's meeting on 7 December 2010, the Representative of Serbia indicated that her authorities wished to propose the adoption of the text of the draft Resolution as initially submitted by the Secretariat.[159] The Secretariat (Director of Monitoring) confirmed that the text of the draft resolution on Serbia was directly inspired by the conclusions of the ACFC's Opinion, the main change being a reference to the introduction of legislation which had been recommended in the Opinion. The Representative of Romania expressed surprise at the Serbian statement in view of the fact that bilateral consultations had progressed to a point where there was only one controversial issue: the reference to PA Resolution 1632 (2008) which in the view of the Serbian authorities did not have binding force. The Chairman, therefore, proposed his good offices in order to facilitate a potential bilateral consensus. This was agreed to.

155 GR-H Rapporteur Group on Human Rights GR-H(2010)7 7 June 2010, Annotated agenda Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
156 GR-H Rapporteur Group on Human Rights GR-H(2010)CB7 21 June 2010, Synopsis Meeting of 15 June 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
157 GR-H Rapporteur Group on Human Rights GR-H(2010)9 10 September 2010, Annotated agenda Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)9&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
158 GR-H Rapporteur Group on Human Rights GR-H(2010)CB8 27 September 2010, Synopsis Meeting of 21 September 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
159 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).

At the GR-H's next meeting on 20 January 2011, the Chair could inform the Group that he had taken part in a bilateral consultative meeting that morning and that progress was being achieved.[160] An informal GR-H meeting took place on 17 February 2011 and two official GR-H meetings in March which remain restricted. At its meeting on 30 March 2011, the CM adopted the Resolution on Serbia which apparently had been finalized on the GR-H's meeting of 17 March 2011.[161]

Substantive issues

The substantive issues which upheld the process on the draft resolution on Serbia are not known except for the discussion in the meeting of 7 December 2010 with the Romanian delegation regarding the binding force of the PA Resolution 1632 (2008). Resolution 1632 pertains to Serbia and the issue of Romanian minority councils in Vojvodina and Serbia proper. The statements made by Croatia, Romania, Hungary and Serbia are not made public.

The Opinion presented to the GR-H by the President of the ACFC on 18 May 2010 included a paragraph on the issue of minority councils:

> The delay in adopting some pending legislation, including the law on the national minority councils, over the last five years has caused legitimate concerns and, on the whole, the pace of reform in the area of minority protection, has slowed down.[162]

The draft Resolution on Serbia presented to the GR-H for discussion on 18 May 2010 referred to the minority council issues as follows:

> The legal framework for the participation of national minorities through the councils for inter-ethnic relations at the municipal level lacks clarity.[163]

The draft Resolution therefore included one recommendation on the issue of councils to the effect that the Serbian government seeks to "ensure that conditions are in place for the effective implementation of the newly adopted Laws on the Prohibition of Discrimination and on the National Councils of National Minorities."[164] The CM Resolution adopted on 30 March 2011 referred to the issue of minority councils with exactly the same wording as the draft Resolution.

Summary

The political process in the case of the CM Resolution on Serbia's implementation of the FCNM seems to centre on the issue of minority councils. While Serbia had managed to adopt the Law on the National Councils of National Minorities, it would appear that the further implementation of the law was an issue. Whether this issue was in fact an inter-state issue between Romania and Serbia is not clear. However, the debate on the PA Resolution 1632 (2008) on Romanian minority councils in Vojvodina seems to indicate that also in the case of the Serbian Resolution, the GR-H became the arena for inter-state negotiations on the basis of kin-state grievances.

160 GR-H Rapporteur Group on Human Rights GR-H(2011)CB1 26 January 2011, Synopsis Meeting of 20 January 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
161 Resolution CM/ResCMN(2011)7 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia (Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies). See Appendix B.
162 See note 151.
163 Framework Convention for the Protection of National Minorities – Draft resolution on the implementation of the Convention by Serbia Ministers' Deputies CM Documents CM(2010)63, 7 May 2010. See Appendix A.
164 See note 163.

The Ukraine

The Ukraine joined the Council of Europe on 9 November 1995 but had signed the FCNM already on 15 September 1995 before becoming a member. The FCNM was ratified on 26 January 1998 and came into force 1 May 1998. The first cycle of monitoring saw a normal process with submission of first state report on 2 November 1999 and adoption of the CM Resolution on 5 February 2003 with the political process from Opinion to Resolution taking eleven months. The monitoring under the second cycle began on 8 June 2006 when the Ukraine submitted its second state report.[165] On 30 May 2008, the ACFC issued its second Opinion on the Ukraine.[166] The government of the Ukraine submitted comments to the Opinion six months later on 19 November 2008.[167] The CM Resolution was adopted on 30 March 2011, almost three years after the ACFC Opinion. The third cycle of monitoring started on 7 May 2009 with submission of the state report. The visit by the ACFC delegation to the Ukraine took place in early 2012, thus rendering the third cycle monitoring outside the norm also.[168]

Procedural aspects

The President of the ACFC was due to present the Opinion on the Ukraine at the GR-H meeting of 3 February 2009.[169] Unfortunately, his attendance in the meeting had to be cancelled so the presentation was postponed to a forthcoming meeting.[170] The presentation thus took place at the GR-H meeting on 10 March 2009.[171] At the same meeting, the GR-H also discussed the first draft of the Resolution on the Ukraine.[172] During the debate several delegations submitted amendments[173] and the Representative of the Russian Federation made a statement (see section below).[174] The draft resolution in respect of Ukraine would, therefore, be reconsidered at the next meeting of the GR-H on 14 April on the basis of a revised text to be prepared by the Secretariat in consultation with the delegations concerned. The representative of Ukraine warned, however, that upsetting the balance of the original draft text might lead to the text not being acceptable to his authorities.

165 SECOND REPORT SUBMITTED BY UKRAINE OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Received on 8 June 2006, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Ukraine (accessed 17.4.2012).

166 ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES Second Opinion on Ukraine adopted on 30 May 2008, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Ukraine (accessed 17.4.2012).

167 COMMENTS OF THE GOVERNMENT OF UKRAINE ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY UKRAINE (received on 19 November 2008), http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Ukraine (accessed 17.4.2012).

168 Press release issued 23.1.2012, http://www.coe.int/t/dghl/monitoring/minorities/4_Events/News_Ukraine_jan2012_en.asp (accessed 17.4.2012).

169 GR-H Rapporteur Group on Human Rights GR-H(2009)2 23 January 2009, annotated Agenda Meeting of 3 February 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

170 GR-H Rapporteur Group on Human Rights GR-H(2009)CB1 9 February 2009, Synopsis Meeting of 3 February 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

171 GR-H Rapporteur Group on human rights GR-H(2009)4 27 February 2009, Annotated Agenda Meeting of 10 March 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

172 See note 171. The first text of the draft Resolution is not available. A revised compromise text proposed by the Chair of the GR-H and dated 29 Sep 2009 has been uploaded on the Council of Europe website. See text in Appendix A.

173 The identity of the delegations was not made public.

174 Statement appended to GR-H Rapporteur Group on human rights GR-H(2009)CB2 16 March 2009, Synopsis Meeting of 10 March 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

The month of April 2009 saw two GR-H meetings, on 2nd and 14th April.[175] In the joint synopsis for the meetings, the Chair proposed to postpone the discussion of the draft resolution on the Ukraine given the fact that consultations with interested delegations were ongoing.[176] During the 18 June meeting, the Chairman noted that informal consultations with the states concerned were still under way and not yet concluded. He therefore noted that the draft resolution in respect of Ukraine would be reconsidered at the next meeting of the GR-H on the basis of a revised text to be prepared by the Secretariat.[177] If agreement could be reached, the draft resolution would be submitted to the CM for adoption without further debate at one of their forthcoming meetings.

However, during the following meeting of the GR-H on 7 July 2009, the Chairman proposed that the draft Resolution on the implementation of the FCNM by the Ukraine be removed from the meeting agenda. He informed delegations that, despite several attempts, it had not been possible to arrive at a new draft resolution that was acceptable to all the delegations concerned by the day of the meeting. He mentioned the desire expressed by all the delegations consulted to submit a draft resolution to the CM for adoption at their 1066th meeting (23 September 2009). He also informed the Group of his decision to propose a compromise which would be forwarded to all delegations in the next few days.[178] He called furthermore on delegations to exercise caution before putting forward any proposals for amendments to this draft. The Representative of the Ukraine said that his delegation might be able to agree to this new compromise proposal and stressed the particularly fragile nature of the possible compromise produced by the Chairman.[179] Nevertheless, the draft resolution was not ready to be submitted to the CM as the Chairman had hoped.

During the meeting of the GR-H on 22 September 2009, a debate took place about the draft Resolution on the Ukraine. Since the Chair was able to conclude after the debate that there remained only one point to be resolved, he proposed that the draft should be submitted to the CM at their 1067th meeting (7 October 2009) with a view to its adoption. He reminded delegations that sacrifices had been made in arriving at the current state of compromise but that these sacrifices should not be taken for granted. He called for good will on all sides in order to reach a satisfactory conclusion.[180]

On 7 October 2009, the Chair of the GR-H presented the compromise proposal for a Resolution on the Ukraine to the CM.[181] It was thus one year and four months after the ACFC Opinion had been issued. However, the minutes of the meeting of the CM meeting reveals that the Chair of the CM had to note

175 GR-H Rapporteur Group on human rights GR-H(2009)6 1 April 2009, Annotated Agenda Meeting of 2 April and 14 April 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)6&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
176 GR-H Rapporteur Group on human rights GR-H(2009)CB3 20 April 2009, Synopsis Meeting of 2 and 14 April 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
177 GR-H Rapporteur Group on human rights GR-H(2009)CB5 24 June 2009, Synopsis Meeting of 18 June 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
178 See Appendix A.
179 GR-H Rapporteur Group on human rights GR-H(2009)CB6 13 July 2009, Synopsis Meeting of 7 July 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB6&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
180 GR-H Rapporteur Group on human rights GR-H(2009)CB7 28 September 2009, Synopsis Meeting of 22 September 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2009)CB7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
181 Ministers' Deputies Notes on the Agenda CM/Notes/1067/4.5 29 September 2009, 1067 Meeting, 7 October 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Notes/1067/4.5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

that the draft Resolution submitted on the implementation of the FCNM by the Ukraine was not adopted.[182]

During the process to adopt a resolution for the Ukraine, the CM was also reviewing the Resolution on the "Consequences of the Committee of Ministers' failure to adopt a resolution on the implementation of the Framework Convention for the Protection of National Minorities" (see Introduction, Section on CM decision process). During the early part of 2010 (11 and 18 March) informal meetings of the GR-H took place but it is not clear if the Ukraine Resolution was discussed. Finally, on the agenda for the 7 December 2010 GR-H meeting, the Ukraine Resolution appeared again.[183] It was not, however, listed as an item for discussion but merely to recall that this text was the subject of consultations between interested delegations who were invited to report to the GR-H on the progress achieved. It was thus possible for the Chairman to note during the 7 December 2010 meeting that the consultations between interested delegations had advanced to a stage where the only point of difference was a footnote to the text.[184] He therefore offered his services to mediate the matter so that an agreed text could be adopted as soon as possible.

In early 2011 a number of further informal meetings took place of which documentation is restricted (31 January and 11 February). On the 20 January 2011 GR-H meeting, the Chairman reported that he had taken part in a consultative meeting earlier that week and that the Ukrainian delegation had undertaken to provide certain information which might provide a means of dissipating the last obstacle to the submission of an agreed text.[185] On 17 February 2011 an open-ended consultation meeting took place. Two further GR-H meetings took place on 14 and 17 March 2011. The 17 March 2011 heard the Chairman note that the only outstanding issue was footnote number 4 on page 4 of the draft Resolution (on minority language education) on which further informal consultations would be held.[186] Apparently, the footnote issue was resolved because on 30 March 2011, the Ukraine Resolution was adopted by the CM.[187]

Substantive issues

With very limited material upon which to draw, it is only possible to surmise that the main substantive issue identified in the case of the draft Resolution on the Ukraine's implementation of the FCNM was related to minority language use and education. The ACFC Opinion adopted on 30 May 2008 and presented to the GR-H during its meeting on 10 March 2009 noted the following in the Executive Summary:

182 Ministers' Deputies Decisions CM/Del/Dec(2009)1067 Addendum 9 October 2009, 1067th meeting, 7 October 2009, Chair's summing-up, https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2009)1067&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).
183 GR-H Rapporteur Group on Human Rights GR-H(2010)12 29 November 2010, Annotated agenda Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
184 GR-H Rapporteur Group on Human Rights GR-H(2010)CB11 13 December 2010, Synopsis Meeting of 7 December 2010, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2010)CB11&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
185 GR-H Rapporteur Group on Human Rights GR-H(2011)CB1 26 January 2011, Synopsis Meeting of 20 January 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB1&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
186 GR-H Rapporteur Group on Human Rights GR-H(2011)CB3, 23 March 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=GR-H(2011)CB3&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012).
187Resolution CM/ResCMN(2011)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine (Adopted by the Committee of Ministers on 30 March 2011at the 1110th meeting of the Ministers' Deputies), https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCMN(2011)8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (accessed 17.4.2012). See Appendix B.

> Language quotas to promote the use of the State language in radio and television broadcasting have had an adverse effect on programmes in minority languages. The threshold of such quotas and their possible application to private broadcasters raises issues of compatibility with the Framework Convention. In the area of cinematography, recent language restrictions have been imposed and may have a disproportionate effect on the production and broadcasting of films in minority languages.
>
> The Advisory Committee noted with concern that final examinations in secondary education and entrance examination to higher education institutions will have to be conducted in Ukrainian only. This reform will also apply to students who have studied in schools with minority language instruction. The various reforms promoting the use of the State language, although warranted, may lead to undue limitations of the rights and opportunities of persons belonging to national minorities. It is therefore essential that their effects be carefully considered.[188]

The Opinion further develops this aspect of minority protection and sums it up in the following recommendations to the Ukrainian government:

- Ensure that policies to promote the use of the State language do not disproportionately restrict the use of minority languages;
- Consider the possibility to resort to incentive-based measures and voluntary methods to promote the use of the state language in the media and review the imposition of rigid language quotas;
- Ensure that initiatives aimed at promoting the Ukrainian language in education do not result in undue limitations for the right to minority language education;

The declaration made by the Representative of the Russian Federation at the very beginning of the process during the 10 March 2009 GR-H meeting underlines this:

> "In connection with the Second opinion of the Advisory Committee on Ukraine and with the Comments of the Ukrainian Government on the opinion the Russian Federation would like to stress some issues.
>
> With regret we have to say that according to conclusions of the Advisory Committee the common situation with the ensuring the rights of representatives of national minorities was deteriorated in comparison with the first round of monitoring notwithstanding with the efforts of the Ukrainian authorities aimed to fulfillment of commitments in this field. The issue of the most concern is the persisting legal uncertainty and unbalanced reforms as regards the protection of national minorities, in particular the use of their languages in public and private life (paragraphs 9-12, 61-65).
>
> This delegation shares the majority of assessments made by the Advisory Committee and believes that its recommendations will become a good basis for the Ukrainian authorities to correct the situation with the rights of the representatives of national minorities in the country. From our side we are ready to discuss all the outstanding issues in the spirit of mutual understanding with our Ukrainian neighbours and with the aim to achieve the highest democratic standards established by the Council of Europe in the sphere of protection of national minorities.
> Going to specific items this delegation would like to mention that the major problems of the Russian speaking population in Ukraine reflected in the report concern the right to use their native language in private and public life which according to report is being unduly restricted.
>
> This delegation fully agrees with the assessments of the Advisory Committee of the language policy conducted in Ukraine and believes that *"it is important that policies to promote the use of*

188 See note 166.

the State language do not disproportionately restrict the use of minority languages, including Russian" (paragraph 12), *"legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards"* (paragraph 65).

This delegation shares the deep concern of the Advisory Committee *"about the adverse effect that language quotas in the media field may have on the right for persons belonging to national minorities to have access to radio and television programmes in their languages"* (paragraph 131), including extreme difficulties "*to obtain a license for broadcasting programmes in minority languages, also at the regional level"*. The imposing of rigid translation or dubbing requirements not only in public but also in private broadcasting sector, including cinematography, *"cause undue difficulties for persons belonging to a national minority"* (paragraphs 21, 132). All these measures are not compatible with the Framework Convention and also with Article 10 of the European Convention on Protection of Human Rights.

In this connection this delegation calls on the Ukrainian side to implement recommendations by the Advisory Committee *"to review quota provisions and requirements to translate into Ukrainian all foreign programmes"* (paragraphs 134-136 and 139) and to bring its legislation in accordance with the international democratic standards.

The report notes that the situation in the field of education was deteriorated. We share reported concerns about *"the lack of quality textbooks, including exclusion of foreign textbooks"*, "the lack of qualified teachers for teaching in minority languages", *"objections from the authorities to the introduction of teaching in minority languages"* (paragraphs 166, 168-170). We also share the opinion that reform in secondary education *"was introduced without due consideration being given to the need to protect the interests of the pupils concerned"* (paragraph 188). The disturbing *"trend towards the closure of Russian schools has been pursued and representatives of the Russian minority complain that this is also the case in regions where Russian speakers form a significant part of the population or even the local majority"* (paragraph 189).

This delegation believes that the situation in the sphere of education demands urgent measures to protect children from deterioration of quality of education and to ensure the right for getting instructions on their native language and simultaneously properly learning the State language.

We do not fully agree with the approach chosen by the Advisory Committee to assessment the role of the Russian language in Ukraine. This delegation believes that besides the legal frameworks the real situation should be taken into account. And the real situation with the Russian language shows that historically the Russian language is a language of the vast majority of the Ukrainian population in several regions. The report mentions in paragraph 148 the initiatives to declare Russian a regional language in Donetsk and Kharkov regions and cities of Sevastopol and Yalta which were made in conformity with the European Charter for Regional or Minority Languages. These initiatives were depicted by the authorities as separatism. Regrettably the Advisory Committee does not give its own assessments of these facts. This delegation would like to stress that due to the special position of the Russian language in some regions of Ukraine it could be recommended to Ukraine to consider the issue of declaration it as a regional language.

One more issue should be highlighted. This delegation shares the assessments and recommendations made by the Advisory Committee regarding Ruthenians (Rusyns) living in Ukraine and being refused recognition as a separate ethnos and correspondingly excluded from the protection of the Framework Convention. The Russian side along with the Advisory Committee believes that all representatives of national minorities should be guaranteed the right to self-identification and to be protected by the Framework Convention (paragraphs 37, 39-40).

> In conclusion, as it arises from the Opinion of the Advisory Committee there are a lot of outstanding issues that must be resolved, including the legislation reform in the sphere of national minorities and language policy. The Russian side would like to encourage Ukraine to continue the close dialogue with the Advisory Committee in this regard and to consider thoroughly its recommendations in order to implement them in accordance with the international standards. We also encourage the Ukrainian authorities to establish and broaden the dialogue with representatives of national minorities living in Ukraine in order to take into account properly their interests while conducting reforms which may concern them."[189]

The draft Resolution on the Ukraine also presented at the 10 March 2009 meeting included the following passages on minority language issues:

> The right balance needs to be struck between the legitimate aim to promote the use of the Ukrainian language and the necessity to support the use of minority languages in various fields of public life. Ongoing reforms should be pursued in accordance with a coherent and comprehensive language policy, which remains to be developed. It is essential that the principles underlying such a policy enjoy broader consensus to ensure a stronger sense of ownership by the population, including persons belonging to national minorities, in accordance with Article 5 paragraph 1 of the Framework Convention.[190]

The draft Resolution therefore provides the following recommendation to the Ukrainian government:

> [to] ensure that initiatives aimed at promoting the Ukrainian language in education do not result in undue limitations for the right to minority language education and review, in consultation with persons belonging to national minorities, the legal framework pertaining to minority education, including higher education.

It was the footnote to this paragraph which was the last remaining issue that ignited further consultations in early 2011. The issue was apparently an editing issue which was resolved between 17 and 30 March 2011.

Summary

The political process on the drafting of the Resolution on the implementation of the Ukraine of the FCNM follows the pattern of the other cases analyzed in this Report. Inter-state relations again dominate the process; in this case kin-state issues pertaining to minority language use, including in the media, and learning of the Russian speaking minority in the Ukraine. The substantive side of the negotiations were thus highly relevant for the implementation of the FCNM. The procedural aspect of the process was unique in that it included involving the CM at a stage when the text was not acceptable to the members of the CM. Hence, the draft Resolution was sent back to the GR-H for further consultations and negotiations.

PRELIMINARY CONCLUSIONS

Of the 39 member states that have signed and ratified the FCNM, six were identified for this Report because the political process following the technical monitoring process had turned out to be considerably longer than the norm of around 12 months. Three out of the six have seen a finalization

189 See note 174.

190 Ministers' Deputies CM Documents CM(2009)33 rev2 29 September 2009, 1067 Meeting, 7 October 2009, https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2009)33&Language=lanEnglish&Ver=rev2&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 (accessed 17.4.2012).

of the political process with the adoption of a CM resolution, whereas three remain unfinished. Thus, after more than three years CM resolutions on Georgia and Poland have not been adopted, and after more than four years a resolution on Lithuania remains outstanding. Resolved and finalized by CM adoption of a resolution were the processes on Latvia, Serbia and the Ukraine.

Not included in this Report is a discussion on second cycle monitoring of Bulgaria where the political process took two years. This is due to the fact that documents have not been released according to the normal scheduleeven as the Resolution was adopted on 1 February 2012.

The aim of this Report was to begin questioning whether the slowed monitoring process may mean that the FCNM is not enjoying the initial support it did. This would be done through an examination of actor behaviour and issues in the political process in the GR-H using open sources. It was clear from the beginning that a sampling of the six cases out of 39, which have experienced delay in the political process in the GR-H, may not in itself be a representative illustration. They represent 15 percent of the states party to the FCNM. However, 15 percent is relevant if put in perspective of first and second cycle monitoring, especially if second cycle monitoring follows a first cycle monitoring that adhered to the geneal norm of 12 months. Of the six cases analyzed in this Report, four were in the second cycle: Lithuania, Poland Serbia, and the Ukraine. All four had experienced a first cycle political process that followed the norm. Why then the extended political process in the second cycle?

Turning to the substantive side of the processes reveals – with the caveat that only open sources were used – what and who upheld progress in the GR-H. At the general level, all six processes heard arguments and grievances on kin-state issues. In the case of the Resolution on Lithuania perhaps some of the strongest rhetoric was heard from the Polish delegation, whereas in the case of the Resolution on Serbia a vague voice was heard from the Romanian delegation. The case of the process of the Resolution on Poland remains unclear as to the kin-states in action. One can, nevertheless, conclude tenuously that the monitoring processes were upheld by bilateral relations between member states, usually neighbouring states seeking to represent kin-state minorities.

Upholding monitoring of international treaties on the basis of bilateral issues clearly goes against the tenets and values of the FCNM instrument and violates international law according to the principles set out in the Vienna Convention on the Law of Treaties (1969). According to the Vienna Convention parties to international treaties are obliged to refrain from actions that defeat the object and purpose of a treaty.[191] In the case of the FCNM, the object and the purpose of the treaty is to take minority issues out of the state setting of minority-majority relations and elevate them to the international level in order to avoid unilateral and bilateral actions against weak and vulnerable minority groups. With regard to the actors pursuing these political strategies, the apparent agents are the delegations representing member states in the GR-H. However, as we have noted in the beginning and when possible throughout the analysis, delegations usually act upon instructions from governments at the central level of the state. This is because, the ultimate responsibility of the parties to the FCNM lies with the sovereign state which has signed and ratified the instrument. The perpetrators are, therefore, states which have acceeded to the FCNM in supposedly good faith.

Returning to the substantive issues that caused the delegations to act on behalf of their governments, we see that, with the exception of the resolution on Georgia, all kin-state issues pertained to the implementation of the FCNM. The process of Georgia, on the other hand, appears to be stranded on the issue of whether the 2008 conflict between Georgia and the Russian Federation should be mentioned in the CM Resolution on Georgia. The substantive issues are categorized in Table 1.

Table 1 – Substantive issues in FCNM monitoring

191 Preamble and Article 26, Article 27, and Article 31 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331.

Substantive issues/ CM Resolution	Georgia	Latvia	Lithuania	Poland	Serbia	Ukraine
Reference to bilateral conflict	x					
Language		x				x
Citizenship/ naturalization		x				
Legal framework			x		x	
Minority councils					x	
Media						x
Reciprocity				x		

Tove H. Malloy©

Another aspect of the processes is timing, timing within the GR-H process as well as in relation to external events. With regard to the latter, we know that the Georgia process took place in the GR-H after the August 2008 conflict between Georgia and the Russian Federation. As to the remaining five cases, external events, such as local political processes in society as well as in relevant institutions, such as parliaments, would be of relevance in order to fully analyze the GR-H processes. In this Report, this has not been possible, but it should be kept in mind for future research efforts. Material on political processes in the six case studies does exist, of course, and putting the results from this Report in contact with such research would clearly enhance the picture and our knowledge. As a miminum, the state reports could be consulted and put in contact with the statements made during consultations. But also external research should be consulted.

Timing within the GR-H process is relevant with regard to kin-state behaviour both in terms of consultations under the auspices of the Chairmanship of the GR-H and in term of bargaining. Thus, in the case of Georgia whose monitoring process started in 2009, we can establish that the monitoring process of the Russian Federation did not overlap initially. To recall, the delegation of the Russian Federation upheld the Resolution on Georgia due to the issue of the 2008 conflict. However, the third cycle monitoring of Russia's implementation of the FCNM began in 2011 and is apparently due to end in June 2012. With the process on Georgia still unresolved, this means that the two Resolutions have been processes simultaneously in the GR-H. It is, therefore, feasible to ask what has happened during consultations? Bargaining between the two states may not be relevant, given the sinister outcome of the conflict in 2008. However, the fact that the Resolution on the Russian Federation is set to materialize, while the one on Georgia remains elusive must be questioned. Moreover, if we see adoption of the Resolution on Georgia soon, one might question what has happened?

Similar circumstances were seen in the case of Lithuania, whose the kin-state issues were raised by the Polish delegation. Here we see overlap in the process on the Resolution on Poland after about 13 months after the process on the Resolution on Lithuania was started. Neither has reached conclusion by adoption of a CM Resolution, and the two draft resolutions are now processed simultaneously in the GR-H. This leaves the analysis open for questioning about the intensions of governments, and more research would be helpful.

In the case of Latvia, there was no overlap between the processes on Latvia and the Russian Federation. While the delegation of the Russian Federation made a statement on Latvia during consultations, it is not possible to see any bargaining opportunities. Similar, in the case of the Resolution on Serbia, where we identified a mild kin-state issue, there is no overlap at all.

Finally, in the case of the Resolution on the Ukraine, where the Russian Federation is the kin-state having made statements, there is no overlap but we know that consultations have taken place. Bargaining in politics is not new, of course, and certainly not at the international level. If it is the case

with the monitoring process of the FCNM, the extent to which consultations included bargaining would have to be ascertained through futher research.

That the political process is not in a sound state of being could perhaps be surmised by the debate in the CM in 2010 on the so-called "fall-back" position and a request to the Secretariat to draw up a legal opinion on the repercussions of the failure of the CM to adopt a resoluiton within a convention control procedure. To recall, the "fall-back" option would allow the CM to pass on an ACFC opinion to a member state without comments in the event no draft Resolution could be agreed upon. It is not clear from the open sources what was eventually decided by the CM and whether a legal opinion on the repercussions of failure to adopt a resolution were taken further into consideration. This area too would benefit from futher research and analysis. Nevertheless, one could argue that the year 2010 was perhaps a year when the self-confidence of the GR-H and the CM Deputies was at a rather low level.

Finally, the geographic scope of the six cases studied in this Report suggests some additional points. Firstly, all six cases pertain to Eastern Europe and to kin-state issues in Eastern Europe. Does this imply that kin-state issues are higher on the political agenda in these states? Secondly, three of the cases, Georga, Latvia and the Ukraine demonstrated kin-state issues with the Russian Federation which is a neighbouring state to these members, and together with Lithuania these states have in common that they were all part of the Soviet Union. Does this imply anything about kin-state issues in Russian politics? Thirdly, all six states under study are among the new member states of the Council of Europe. To recall, the Council of Europe established the GT-Sages in 1997 with the view to prepare the institution for the influx of new members and the pressure that this would create on the functioning of the Council of Europe. Do the findings in this Report suggest that the approach to international treaty monitoring differs from Eastern Europe to Western Europe, from new member states to old member states?

Clearly much more research is needed to support these preliminary and tenuous conclusions. And these conclusions must be put in contact with ongoing research made through other approaches, such as research on norm diffusion[192] and state level implementation.[193] So, the original question still remains to be answered more firmly: is there a re-politicization of the FCNM monitoring process taking place?

192 See for instance, Malte Brosig (ed.), *Human Rights in Europe: a fragmented regime?* (Peter Lang, 2006).
193 See projects, such as Best Practice of Minority Protection in Europe (MIMI) at http://www.eurac.edu/en/research/institutes/imr/Projects/ProjectDetails.aspx?pid=4688 (accessed 18.4.2012), and The Adoption, Implementation and Sustainability of Minority Protection Rules in the Context of EU Condititionality at http://www.eup.ethz.ch/research/minority_protection (accessed 18.4.2012).

APPENDIX A – DRAFT RESOLUTIONS

Georgia

Draft Resolution CM/ResCMN(2010)… on the implementation of the Framework Convention for the Protection of National Minorities by Georgia

(Adopted by the Committee of Ministers on … 2010

at the …th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[3]

Having regard to the instrument of ratification deposited by Georgia on 22 December 2005;

Recalling that the Government of Georgia transmitted its state report in respect of the first monitoring cycle under the Framework Convention on 16 July 2007;

Whereas the Advisory Committee accepted the invitation of the Government of Georgia to send a delegation to gather further information in Georgia, this visit taking place from 8 to 13 December 2008;

Whereas the Advisory Committee's opinion on the implementation of the Framework Convention by Georgia was adopted on 19 March 2009 and then transmitted to the Permanent Representative of Georgia and communicated to the Permanent Representatives of all member states as document CM(2009)82 dated 14 May 2009;

Whereas the Government of Georgia submitted its written comments on the opinion of the Advisory Committee, these written comments having been communicated to the Permanent Representatives of all member states as document CM(2009)82add;

Having examined the Advisory Committee's opinion and the written comments of the Government of Georgia;

Having also taken note of comments by other governments,

1. Adopts the following conclusions concerning the implementation of the Framework Convention by Georgia:

~~The Committee of Ministers welcomes the fact that the~~ **It is to be welcomed that** ratification of the Framework Convention has triggered a debate in Georgia and that discussion is continuing in connection with the introduction of a more comprehensive legislative framework for the protection of national minorities. It ~~hopes~~ **is to be hoped** that, as a result of this debate, Georgia will be able to devise a legislative framework for the protection of national minorities and introduce an open, comprehensive, long-term policy making it possible to respond appropriately to existing and future needs, in accordance with the principles set out in the Framework Convention. It is important that persons belonging to national minorities are fully involved in this debate. ~~The Committee of Ministers notes with satisfaction that the~~ **The** Government has stressed the need to promote tolerance and integration **and** ~~it welcomes~~ the recent adoption of the National Concept on Tolerance and Civic Integration **is to be welcomed;** ~~and it hopes~~ **it is to be hoped** that it will be effectively implemented.

~~- The Committee of Ministers encourages~~ The Georgian authorities and all the parties concerned **are encouraged** to step up their efforts and to take an open and constructive approach in order to find as soon as possible a just and lasting solution to the conflict over South Ossetia / Tskhinvali region (Georgia) and Abkhazia (Georgia), as the conflict is adversely affecting the implementation of the Framework Convention throughout the entire Georgian territory. In doing so, the principles enshrined in the Framework Convention should be fully respected, in order to guarantee the rights of persons belonging to national minorities.

- The ~~Committee of Ministers considers that the~~ linguistic rights of persons belonging to national minorities are still a major challenge facing the authorities. Whilst they are making efforts to make it easier for those persons belonging to national minorities who are not familiar with the Georgian language to learn it, these efforts do not constitute an appropriate response to existing needs. Improving facilities for learning Georgian should therefore be a priority for the authorities. They should also ensure that the policy of promoting the Georgian language is not pursued to the detriment of the linguistic rights of persons belonging to national minorities, the effective enforcement of which requires more resolute measures, both in the legislative framework and in its implementation.

- In the field of education, the lack of resources invested in tuition provided in minority languages means that the pupils concerned are not on an equal footing with other pupils. Against this background, ~~the Committee of Ministers takes note with interest of~~ the reforms undertaken in the Georgian education system **are to be noted**. ~~It welcomes~~ **I**n particular the recent legislative changes to the national university entrance examination procedure and the establishment of a quota system for speakers of minority languages **are to be welcomed**. ~~The Committee of Ministers emphasises that it is essential to ensure~~ **It must be emphasised that** equal access **is essential**, with no unjustified obstacles, to higher education for pupils who have studied in minority language schools. More generally, the authorities should take all the measures needed to promote full and effective equality for persons belonging to minorities in the education system.

- Participation of persons belonging to national minorities in the country's cultural**,** social and economic life and in public affairs remains limited. Their inadequate command of the Georgian language is one of several factors accounting for their marginalisation. The authorities should take vigorous measures to remove legislative and practical obstacles to the participation of persons belonging to national minorities in elected bodies and in the executive, and allow minorities to be better represented in the public service. Consultation of representatives of national minorities by the authorities, particularly through the Council for Ethnic Minorities, should be more systematic, and the recommendations and proposals of this unique body representing minorities should be given all the necessary attention. Moreover, the Georgian authorities should take more resolute measures to promote the effective participation of persons belonging to national minorities in the socio-economic life of the country.

~~- The Committee of Ministers is concerned about~~ **I**ncreased religious tensions mentioned in the Opinion of the Advisory Committee, which particularly affect persons belonging to national minorities**, are a cause of concern**. The authorities should make every effort to combat this phenomenon and, in general, all forms of intolerance based on ethnic or religious affiliation. It is also necessary to increase efforts to promote mutual understanding and intercultural dialogue between the majority population and persons belonging to national minorities, by means of a balanced policy that takes full account of the rights of persons belonging to minorities.

2. Recommends that Georgia take appropriate account of the conclusions set out in section 1 above, together with the various comments in the Advisory Committee's opinion.

3. Invites the Government of Georgia, in accordance with Resolution (97) 10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in sections 1 and 2 above.

[1] This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2] The present version of the text has been corrected in response to delegations' remarks regarding the frequent use of the expression "Committee of Ministers" in the initial text. No modification has been made in respect of

substantial matters raised by delegations. As and when revised texts containing proposals of substance are issued, the technical changes indicated in the present version will, for reasons of clarity, no longer be visible.

[3] In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

Latvia

Draft Resolution CM/ResCMN(2010)… on the implementation of the Framework Convention for the Protection of National Minorities by Latvia

(Adopted by the Committee of Ministers on … 2010
at the … meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out the rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[2]

Having regard to the instrument of ratification submitted by Latvia on 6 June 2005;

Recalling that the Government of Latvia transmitted its state report in respect of the first monitoring cycle under the Framework Convention on 11 October 2006;

Whereas the Advisory Committee accepted the invitation of the Government of Latvia to send a delegation to gather further information in Latvia, this visit taking place from 9-13 June 2008;

Whereas the Advisory Committee's opinion on the implementation of the Framework Convention by Latvia was adopted on 8 October 2008 and then transmitted to the Permanent Representative of Latvia and communicated to the permanent representatives of all member states as document CM(2008)180;

Whereas the Government of Latvia submitted its written comments on the opinion of the Advisory Committee, these written comments having been communicated to the delegations of all member states on 25 May 2009 as document CM(2008)180 add;

Having examined the Advisory Committee's opinion and the written comments of the Government of Latvia;

Having also taken note of comments by other governments,

1. Adopts the following conclusions concerning the implementation of the Framework Convention by Latvia:

- The Committee of Ministers notes with satisfaction the efforts made by the Latvian authorities in recent years to promote the integration of society. It welcomes the steps taken to improve the legal and institutional framework for protection against discrimination and racism and expects that the monitoring of the actual situation in this field will receive increased attention in the future. While acknowledging the efforts made by the Government to support the preservation of the national minorities' specific cultures and

identities, the Committee of Ministers takes note with concern of the significant reduction, in recent years, of state financial support for the organisations of national minorities.

- The Committee of Ministers welcomes the inclusion of "non-citizens" identifying themselves with a national minority in the personal scope of application of the Framework Convention. It is important to underline that such an approach is in line with the spirit of the Framework Convention. It regrets, however, as regards the extent of the rights available to "non-citizens" under the Framework Convention, that these persons are excluded from the protection of key provisions of the Framework Convention, in particular those relating to effective participation in public life. Given the very large number of persons concerned and the specific context of Latvia and its minorities, the Committee of Ministers cannot but encourage the authorities to interpret and apply the relevant national legislation so as not to entail any disproportionate restrictions of the protection offered by the Framework Convention in respect of "non-citizens" identifying themselves with a national minority.

- The Committee of Ministers is concerned that persons belonging to national minorities in Latvia do not fully benefit, where needed, from important provisions of the Framework Convention relating to the use of their minority languages in dealings with the administrative authorities. This situation is not in conformity with the provisions of the Framework Convention. In addition, the Committee of Ministers is concerned that the Latvian legislation does not permit the use of minority languages alongside Latvian in local topographical indications. More generally, while acknowledging the legitimate aim of protecting and strengthening Latvian as the State language, the Committee of Ministers considers that all due attention should be paid to the effective enjoyment of the right of persons belonging to national minorities to use freely their minority languages.

- The Committee of Ministers considers that it is essential to avoid language-based discrimination of persons belonging to national minorities in the labour market, and calls upon the authorities to avoid applying disproportionate language proficiency requirements to access certain posts in the public sphere. Furthermore, it is deeply concerned by the increasingly frequent application of such requirements, especially with regard to private sphere occupations, as well as by the authorities' overall approach to the monitoring of the implementation of the language-related rules. The Committee of Ministers encourages Latvia to favour a more constructive approach in this sphere, in particular through measures aimed to improve the accessibility of quality Latvian language teaching for those concerned. More generally, the effective participation of persons belonging to national minorities in social and economic life should receive increased attention. The situation of the Roma, who continue to face difficulties in employment, education and access to services, should be adequately addressed without further delay.

- Difficulties have also been noted in the field of education. While recognising positive examples of steps taken to provide persons belonging to national minorities with adequate opportunities for quality education, the Committee of Ministers notes with regret that the availability of teaching in minority languages in public schools is diminishing. Despite the authorities' efforts to train teachers for bilingual education and develop appropriate educational programmes, difficulties are reported as regards the availability of qualified teaching staff for bilingual education and of adequate educational materials. The obligation to use Latvian in the context of the secondary school final examination and the plan to introduce compulsory and exclusive use of Latvian in state funded private universities that have been using minority languages as languages of instruction, are a source of concern for national minorities. While the Committee of Ministers sees the legitimacy of the aim of promoting the state language and its teaching as an instrument for integration in society, it considers that measures taken in this context should be more balanced and take better account of the needs and rights of persons belonging to national minorities.

- Shortcomings relating to the effective participation of persons belonging to national minorities in the decision-making process need to be addressed. The participation through the Council for Minority Participation or equivalent structures should be strengthened and made more efficient. A governmental structure in charge of national minority issues should be maintained, with an increased decision-making role on minority-related issues. The access of "non-citizens" identifying themselves with a national minority to public affairs should be improved as a matter of priority. All the necessary steps should be taken, including at the legislative level, to provide them with electoral rights at the local level.

- In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in

this regard, the number of "non-citizens" remains high and the lack of citizenship continues to have a detrimental impact on the enjoyment of the full and effective equality and social integration. The considerable number of children born in Latvia after 21 August 1991 who are still 'non-citizens' is a matter of deep concern. Particular efforts are required in order to promote conditions more conducive to a genuine motivation for naturalisation. The Committee of Ministers urges Latvia to address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures to promote naturalisation.

2. Recommends that Latvia take appropriate account of the conclusions set out in paragraph 1 above, together with the various comments in the Advisory Committee's opinion.

3. Invites the Government of Latvia, in accordance with Resolution (97) 10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in paragraphs 1 and 2 above.

[1] This document was classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2]. In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two thirds of the representatives of the contracting parties casting a vote, including a majority of the representatives of the contracting parties entitled to sit on the Committee of Ministers, vote in favour".

Lithuania

Draft Resolution CM/ResCMN(2009)… on the implementation of the Framework Convention for the Protection of National Minorities by Lithuania

(Adopted by the Committee of Ministers on …
at the …. meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[2]

Having regard to the instrument of ratification submitted by Lithuania on 23 March 2000;

Recalling that the Government of Lithuania transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 3 November 2006;

Having examined the Advisory Committee's second opinion on Lithuania, adopted on 28 February 2008, and the written comments of the Government of Lithuania, received on 20 October 2008;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Lithuania:

a) Positive developments

Following the adoption of the first Opinion of the Advisory Committee in February 2003 and the Committee of Ministers' Resolution in December 2003, Lithuania has taken further steps to improve the implementation of the Framework Convention. The authorities have maintained an inclusive approach to the personal scope of application of this Convention.

The legal and institutional framework pertaining to the implementation of the Framework Convention has been strengthened. Important new pieces of legislation, such as the Law on Education and the anti-discrimination legislation have come into force. In addition, a new draft law on national minorities is currently being discussed by the parliament. The mandate of the Equal Opportunities Ombudsperson has been enlarged to cover various grounds of discrimination, including the ethnic origin. A Prime Minister's Advisor on minority issues has been appointed.

Positive developments affecting fields of importance for persons belonging to national minorities have been noted in relation to the legislation on citizenship, following an important decision of the Constitutional Court. Improvements are also under way as regards the use of minority languages for surnames and first names.

The Government has continued to provide support to the cultural activities of the national minorities and their cultural centres. The authorities have also continued efforts to provide adequate opportunities for minority language teaching and education in the languages of persons belonging to national minorities.

A general climate of tolerance and understanding between persons belonging to national minorities and the majority continues to prevail in Lithuania. Efforts are being made to monitor and combat racism, anti-Semitism and intolerance, in particular in the media, including the Internet.

The authorities have continued to make efforts to address the socio-economic difficulties faced by the Roma. A number of specific measures have been launched to improve their educational situation, both for children and adults.

b) Issues of concern

The legal framework for the protection of persons belonging to national minorities lacks clarity and consistency. The fact that provisions of the Law on National Minorities in force cannot be implemented in practice remains a source of serious concern. Legal uncertainty persists in particular as regards the implementation of important principles of the Framework Convention relating to the use of minority languages in the public sphere, where the Law on the State Language imposes the compulsory use of Lithuanian. Certain judgments adopted by Lithuanian courts on the use of minority languages are disconcerting as they have not taken due account of other laws protecting national minorities, the relevant provisions of the Constitution and of the Framework Convention.

Although a general climate of tolerance and intercultural dialogue characterises Lithuanian society, isolated instances of intolerance and hostility towards persons belonging to certain groups, such as the Roma and the Jews, are still reported. Such manifestations are also reported against immigrants, refugees and asylum seekers. The role played by the media and education in raising awareness about human rights and the increasing diversity of Lithuanian society needs to be strengthened.

The authorities' support to the preservation of national minorities' cultures and identities is insufficient and certain measures taken in the framework of the government's policy of strengthening the State language have raised concerns for national minorities.

Difficulties are still reported with regard to the financial resources available to minority schools in the public education system. The provision of adequate textbooks and qualified teachers deserves constant attention, as well as the requirements for opening minority language classes for the last grades of secondary education. Recent language related measures regarding the final secondary education exams also raise concerns under the Framework Convention.

The participation of persons belonging to national minorities in decision-making should be improved. The language related exception to the prohibition of direct discrimination is problematic from the perspective of the

Framework Convention. It may negatively affect these persons' participation in social and economic life and may, in particular, hamper their efforts to access the labour market. Lack of reliable data on the various minority groups is also an issue which needs increased attention.

In spite of the efforts made in recent years, the Roma continue to face prejudice and particular difficulties in various sectors, including in obtaining identity documents. Discrimination in employment, obstacles in access to housing and health care as well as their educational situation continue to be an issue of serious concern.

2. Adopts the following recommendations in respect of Lithuania:

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

- ensure that, as a result of the legislative processes under way, a clear and consistent legal framework, fully in line with the principles of the Framework Convention, is provided for the protection of persons belonging to national minorities;

- make further efforts, including in terms of financial resources, to support and promote the preservation and development of the culture of national minorities; promote their increased presence in the media and in educational materials;

- take more resolute steps to promote mutual respect, understanding and dialogue among all persons living on the territory of Lithuania; encourage the education system and the media to play a more active role in combating racism and intolerance;

- provide the legal guarantees and practical conditions needed for the effective implementation of the provisions of the Framework Convention relating to the use of the minority languages in the public sphere;

- ensure that the government policy of promotion of the State language and the requirements relating to its command do not introduce disproportionate obstacles for employment and other opportunities of persons belonging to national minorities; monitor and combat any related discrimination against these persons;

- identify ways and means to provide a more adequate response to the minorities' needs in the field of education, including through examining the funding system of minority schools, in consultation with national minorities' representatives;

- promote further the participation of persons belonging to national minorities in the decision-making process, including throughout their more systematic consultation on issues affecting them; promote the participation of these persons in social and economic life as well as in the collection of data concerning their situation in various sectors;

- pursue and strengthen the measures taken to address the problems faced by the Roma in various sectors; take urgent steps to redress the educational situation of Roma children and adults.

3. Invites the Government of Lithuania, in accordance with Resolution (97) 10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in section 1 and 2 above.

Note [1] This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

Note [2] In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be

considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

Poland

Draft Resolution CM/ResCMN(2010)… on the implementation of the Framework Convention for the Protection of National Minorities by Poland

(Adopted by the Committee of Ministers on … 2010
at the …th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[2]

Having regard to the instrument of ratification submitted by Poland on 20 December 2000;

Recalling that the Government of Poland transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 8 November 2007;

Having examined the Advisory Committee's second opinion on Poland, adopted on 20 March 2009, and the written comments of the Government of Poland, received on 7 December 2009;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Poland:

a) Positive developments

The adoption of the Act on National and Ethnic Minorities and on Regional Language, in January 2005, is to be welcomed. Other positive developments include the establishment, under the aforementioned Act, of the Joint Commission of Government and National and Ethnic Minorities with its wide range of consultative prerogatives, and the active role played by the Parliamentary National and Ethnic Minorities Committee in raising public awareness of national minorities' concerns, which have created a framework for discussion on national minority issues and making proposals for resolving the outstanding issues affecting national minorities.

As regards practice, relations between national minorities and the majority are characterised by a climate of mutual understanding and tolerance. The public institutions such as the Ombudsman and the Government Plenipotentiary for Equal Treatment have adopted an active approach and continued efforts to promote respect for human rights and cultural diversity in Poland.

In the last few years, Poland has developed a range of programmes and measures aimed at alleviating difficulties faced by the Roma community in housing, employment, and healthcare, providing solutions to the problems it faces in the field of education and, more generally, combating its social exclusion and marginalisation.

The authorities have already consulted national minorities about the preparation for a new population census scheduled for 2011. It has been noted that the questions on ethnic origin (nationality) and on native language or the language used at home will be optional.

b) Issues of concern

The financial support for cultural projects and institutions remains insufficient despite the recent increase in the funds allocated by the Minister of the Interior and Administration to protect, preserve and develop cultural identity of minorities in Poland. The funding procedures create significant obstacles for small national minority organisations applying for State support.

Although a general climate of tolerance and intercultural dialogue characterises Polish society, instances of intolerance, racism, anti-Semitism and xenophobia are still reported. Official figures indicate that there has been an increase in the number of racially-motivated offences committed in the last few years in Poland. Adequate measures to combat racist acts committed prior to, during and after football matches are not applied.

There are concerns about reported instances of obstacles at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, conditioning respect for minority rights on reciprocity in neighbouring countries, or by the local authorities on the other side of the border.

Notwithstanding the measures taken by the authorities, the situation of Roma is still a cause for concern. A number of Roma, notably in the Małopolskie Region, continue to live in settlements in substandard conditions, without roads, running water or sewage facilities. Reported cases of discrimination, such as the segregation of Roma pupils in the Maszkowice Primary School and the lack of any reaction at the local level, point to a disturbing complacency and condoning of discrimination within some groups of society.

The representation of national minorities in the public radio and television programming councils, despite the existence of a legislative provision to that effect, is lacking. Also, the geographical radio and television coverage by media broadcasting in minority languages of the regions where the national minorities live, remains inadequate.

In the current school curricula, the teaching of the history, culture and traditions of national minorities and their contribution to Polish society is a non-compulsory subject introduced on an *ad hoc* basis in the framework of regional education. This approach does not guarantee that students in general will be provided with adequate information on the history, culture and traditions of national minorities.

In spite of the substantial number of persons declaring in the last census their Silesian nationality and speaking the Silesian language at home, the authorities, apart from the Parliamentary National and Ethnic Minorities Committee, have not considered the matter since the first monitoring cycle and have not entered into dialogue with the persons concerned.

As regards the issue of the possibility to receive education in or of a minority language, the number of the pupils receiving such instruction drops significantly in upper-secondary schools.

Although the law allows the use of the minority language as a “supporting language” in administration and the display in the minority language of traditional local names, street names and other topographical indications intended for the public in the municipalities inhabited by minorities, the actual number of municipalities which apply these provisions remains low. In addition, the right to use the “supporting language” in administration is restricted to the municipal self-government authorities and does not extend to the police, health care services, the post office or the State administration at the local level.

Legislative provisions as regards parliamentary elections, which exempt parties of national minorities from the 5% electoral threshold for allocation of seats, which at face value are favourable to the national minorities, have not in practice led to an adequate political representation of minorities.

2. Adopts the following recommendations in respect of Poland:

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

- to take all necessary measures to prevent, investigate and prosecute all racially-motivated offences;

- in the preparation of the census of 2011, to consult the representatives of minorities about the questions on ethnic origin (nationality) and on native language or the language used at home;

- to include in this census persons belonging to national minorities, among the census officials and use bilingual forms in the municipalities where a minority language enjoys a "supporting language" status;

- to take all measures to prevent and combat incidents of intolerance and xenophobia, including during sporting events; encourage more actively respect for cultural diversity among the public;

- to make further efforts, including by the allocation of sufficient financial resources, to support and promote the preservation and development of the culture of national minorities;

- to take enhanced measures to prevent and combat discrimination and the social exclusion of the Roma; make every effort, in consultation with those persons concerned, to improve the situation of the Roma in fields such as employment, housing and education, including eliminating segregation and increasing awareness of their culture and needs;

- to establish a dialogue with representatives of persons having expressed an interest in the protection provided by the Framework Convention;

- to ensure, in consultation with representatives of the various national minorities, access of persons belonging to national minorities to the radio and television programmes which concern them;

- to review the existing textbooks and the compulsory curriculum, in consultation with minority representatives, with a view to ensuring a more objective reflection of the history, culture and traditions of national minorities.

3. Invites the Government of Poland, in accordance with Resolution (97) 10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in section 1 and 2 above.

[1] This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2] In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

Serbia

Draft Resolution CM/ResCMN(2010)…on the implementation of the Framework Convention for the Protection of National Minorities by Serbia

(Adopted by the Committee of Ministers on … 2010
at the …th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[2]

Having regard to the instrument of ratification submitted by Serbia on 11 May 2001;

Recalling that the Government of Serbia transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 4 March 2008;

Having examined the Advisory Committee's second opinion on Serbia, adopted on 19 March 2009, and the written comments of the Government of Serbia, received on 26 October 2009;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Serbia:

a) Positive developments

The Serbian legislative framework contains commendable guarantees regarding the protection of national minorities. This includes a detailed chapter on minority protection in the 2006 Constitution.

Serbia adopted the Law on Prohibition of Discrimination on 26 March 2009 and the Law on National Councils of National Minorities on 31 August 2009. A new Criminal Code was adopted with some important provisions as regards the prohibition of discrimination. The state level Ombudsman has started his work and is to launch promising initiatives in the field of monitoring national minority protection in all regions of Serbia.

Increased possibilities for persons belonging to national minorities to learn their language have been made available, in particular in the Province of Vojvodina.

Valuable initiatives have been taken by the authorities of the Province of Vojvodina to increase inter-ethnic dialogue.

Measures have been taken to increase signposting in minority languages, although some practical difficulties remain.

Positive steps have been taken to address the problems faced by Roma in their access to education, health, housing and employment.

Serbian public media includes a large and diverse programming in minority languages.

There have been welcome measures to increase participation of persons belonging to national minorities in decision-making. The national minority councils which have been established so far have already contributed positively to addressing national minorities' needs, notably in the field of education and culture.

b) Issues of concern

Measures to increase inter-cultural dialogue have been largely limited to the Province of Vojvodina. A more active role of the central authorities in promoting mutual understanding throughout Serbia is needed.

While there are several positive experiences in some municipalities, engagement of local authorities in national minority issues is, on the whole, too limited and lacks continuity. There is a need to ensure a more consistent approach to the use of minority languages in the public sphere. The legal framework for the participation of national minorities through the councils for inter-ethnic relations at the municipal level lacks clarity.

Acts of discrimination and violence against persons belonging to national minorities are still not sufficiently and adequately addressed by the judicial system. There is a need to increase the confidence of persons belonging to national minorities in referring cases alleging discrimination to the existing judicial and non-judicial

mechanisms. Recent events have also shown that the approach of the police to inter-ethnic issues is still not satisfactory.

Even though minority language education is in general well developed, the teaching of some minority languages and culture remains optional in the Serbian educational system. Further measures are needed to address the shortage of teachers and increase the availability of textbooks adapted to the Serbian curriculum. The issue of recognition of diplomas from educational institutions from the region has still not been approached in a comprehensive and satisfactory manner.

Persons belonging to the Roma minority still face discrimination in a number of fields, including health, employment and housing and the undue practice of channelling Roma children to "special schools" still continues to be reported.

The lack of personal identification documents of many Roma continues to hamper their access to fundamental social rights.

There are concerns about the consistency of the legal framework pertaining to minority language media. In addition, the exemption of minority media from the privatisation process has prompted criticism regarding its negative impact on the sustainability of private media outlets and its consequences in terms of media content.

The participation of persons belonging to national minorities in decision-making could be made more effective and the numerically smaller minorities given more attention in this context. The representation of persons belonging to national minorities in the law-enforcement structures and the judiciary remains to be further developed. Further information on the representation of persons belonging to national minorities in the public administration is needed in order to obtain a clear view on the situation in this field, while paying due attention to international standards in the field of data protection.

The situation of persons belonging to national minorities living in economically disadvantaged areas requires urgent attention and the adoption of temporary positive measures.

2. Adopts the following recommendations in respect of Serbia:

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

- ensure that conditions are in place for the effective implementation of the newly adopted Laws on the Prohibition of Discrimination and on the National Councils of National Minorities;

- consolidate the legislative framework regarding minority media in a way that maintains the obligation of the state to provide national minorities with adequate conditions to create and use their own media;

- ensure that acts of violence and discrimination against persons belonging to national minorities are adequately investigated by law-enforcement bodies and the judiciary, notably by increasing awareness and training measures;

- expand the measures aimed at promoting tolerance and inter-ethnic dialogue throughout Serbia;

- expand opportunities for minority language education, including by addressing the needs expressed by the Vlachs and other national minorities; review the current optional character of the teaching of some minority languages in consultation with national minority representatives;

- ensure that legal and practical conditions are such that signposts in minority languages in the areas concerned can be put in place;

- address the issue of recognition of diplomas from educational institutions from the region in a comprehensive way and take measures to tackle the problems of delay and complexity of procedure which have been identified;

- ensure that measures to be taken in the context of the National Strategy on Roma are given adequate support by both central and local authorities in order to eliminate obstacles to the participation of the Roma in employment, housing, health and education;

- address as a matter of priority, both at legislative and practical level, the lack of personal identification documents of the Roma;

- pursue further efforts to increase the representation of national minorities in the judiciary and in law-enforcement bodies and take steps to obtain a clear view on the representation of national minorities in the public administration;

- pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged areas and ensure that their representatives are adequately involved in both identifying priority projects to be funded and in their implementation in the areas concerned;

- take measures to increase the effectiveness of the councils of inter-ethnic relations at municipal level, *inter alia* by clarifying further their composition and functions.

3. Invites the Government of Serbia, in accordance with Resolution (97) 10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in section 1 and 2 above.

[1] This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2] In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

The Ukraine

Draft Resolution CM/ResCMN(2009)… on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine

(Adopted by the Committee of Ministers on …
at the …. meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution (97) 10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution (97) 10;[2]

Having regard to the instrument of ratification submitted by Ukraine on 26 January 1998;

Recalling that the Government of Ukraine transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 8 June 2006;

Having examined the Advisory Committee's second opinion on Ukraine adopted on 30 May 2008, and the written comments of the Government of Ukraine, received on 19 November 2008;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Ukraine:

a) Positive developments

Ukraine has continued to pay due attention to the protection of national minorities and some steps have been taken to reform the existing legislative framework pertaining to minority protection. For example, the draft Concept on Ethnic Policy, which provides for a number of measures conducive to strengthening inter-cultural and inter-ethnic dialogue, has been finalised and a wide public discussion is now due to start on this document.

Some improvements have been noted with regard to the Crimean Tatars and other formerly deported peoples, such as the granting of Ukrainian citizenship to the vast majority of those who have returned to Ukraine.

Regional initiatives and programmes targeting persons belonging to some minorities, such as the Roma and the Crimean Tatars, have been implemented in some regions with a view to improving their situation in various fields, including health care and education.

Ukraine has continued to provide state funding for cultural initiatives of national minorities and the procedure relating to the allocation of financial support has been made more open and transparent.

Efforts have been made by the Ukrainian authorities to promote inter-cultural and inter-ethnic dialogue, as well as to monitor hate speech in print and electronic media, including on the internet. A promising Action Plan on Countering Racism was adopted in 2007.

The process of restoring historical names in minority languages in compact settlement of national minorities has been pursued.

Additional textbooks for educational institutions with minority languages have been developed since 2002 and the authorities have pledged to intensify their efforts in this field.

The consultative council of minority representatives has recently resumed its work and gained more independence. It is being increasingly consulted by the authorities on issues affecting them.

b) Issues of concern

Apart from some legislative initiatives, there have been no major developments in the legislation pertaining to national minorities. The current legislative framework is partly outdated, lacks coherence and contains a number of shortcomings. There is, therefore, a vital need to adapt the national legislation, including the law on national minorities, to the relevant international standards, including the Framework Convention. Additionally, the authorities are encouraged to pursue further their inclusive approach with regard to the implementation of the Framework Convention, as mentioned in the Opinion of the Advisory Committee.

The right balance needs to be struck between the legitimate aim to promote the use of the Ukrainian language and the necessity to support the use of minority languages in various fields of public life. Ongoing reforms should be pursued in accordance with a coherent and comprehensive language policy, which remains to be developed. It is essential that the principles underlying such a policy enjoy broader consensus to ensure a stronger sense of ownership by the population, including persons belonging to national minorities, in accordance with Article 5 paragraph 1 of the Framework Convention.

Ukraine has still not adopted comprehensive civil and administrative provisions pertaining to discrimination and the lack of reliable statistical data on instances of discrimination makes it difficult to develop targeted policies in this field.

The Roma have continued to face severe social and economic difficulties, which hamper their integration into Ukrainian society. Further efforts to encourage the attendance of Roma children in pre-school education as well as to integrate them in mainstream schools are required.

There has been a worrying increase in the number of racially-motivated acts and manifestations of hostility targeted at various groups, including persons belonging to certain national minorities. It is essential to increase the attention with which such incidents are investigated and the perpetrators prosecuted. Awareness-raising measures should be developed among the authorities concerned.

A lack of financial support from the state makes it difficult for some national minorities to maintain and restore their cultural monuments and cemeteries. Some defacing of religious and minority sites has been reported, including in Crimea.

The legal possibility to apply language quotas to promote the use of the state language in radio and television broadcasts raises serious problems under the Framework Convention, especially with regard to private operators. There is a need to address increasing difficulties encountered in producing and broadcasting television programmes and in distributing films in minority languages.

The share of instruction in the Ukrainian language has continued to increase at all levels of education while, according to the assessment made by persons belonging to some national minorities, instruction in minority languages has been decreasing. It is important to ensure that any measures taken with regard to the language of the final secondary education examinations, whether or not they have an impact on access to higher education institutions, do not have an adverse effect on minority language education at secondary level by lowering the interest for such education. The shortage of quality textbooks and qualified teachers for teaching in minority language persists.

While it is legitimate for the Ukrainian authorities to promote the use of the State language, the on-going reforms in the field of education may have a negative impact, for persons belonging to national minorities, on equal opportunities in accessing higher education according to their needs. **[**Any reform conducive to strengthening the State language in educational institutions needs to be introduced gradually and accompanying measures should allow students to acquire a better proficiency in the State language.**]**

The participation of persons belonging to national minorities in public affairs has been hampered following legislative changes in 2004, which introduced an electoral system of pure proportional representation in one nationwide constituency. A more inclusive participation of Roma organisations should be ensured in the work of the Council of representatives of associations of national minorities, as well as in the context of ad hoc consultations by the authorities.

Problems relating to access to land by Crimean Tatars have largely remained unsolved in Crimea. No legal norms relating to restitution of property to formerly deported peoples have been adopted so far.

2. Adopts the following recommendations in respect of Ukraine:

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

- improve, as a matter of priority, the legislative framework pertaining to minority issues, in particular in the field of education and media, and bring it in line with relevant international norms, including those relating to the Framework Convention, as recommended in the Opinion of the Advisory Committee[3] ~~(see paragraph 65)~~;

- complement, where appropriate, legislative provisions pertaining to discrimination and introduce additional measures to promote full and effective equality;

- strengthen efforts to improve the social and economic situation of persons belonging to disadvantaged minorities, particularly the Roma and the Crimean Tatars;

- increase the attention with which racially-motivated incidents are investigated and the perpetrators prosecuted while stepping up awareness-raising activities among law-enforcement officers, prosecutors and judges;

- take effective measures to ensure that policies to promote the use of the state language fully respect the language-related rights of persons belonging to national minorities, as guaranteed by the Framework Convention;

- examine the possibility of resorting to incentive-based measures and voluntary methods to promote the use of the state language in the media and take measures to address difficulties relating to the production and broadcasting of television programmes as well as to the distribution of films in minority languages;

- ensure that initiatives aimed at promoting the Ukrainian language in education do not result in ~~undue~~ limitations for the right to minority language education and review, in consultation with persons belonging to national minorities, the legal framework pertaining to minority education, including higher education[4];

- increase efforts to promote equal opportunities for access to education at all levels for persons belonging to national minorities, including by providing adequate response to the needs of national minorities in higher education.

- increase efforts to provide quality textbooks and qualified teachers for minority language education;

- create conditions to facilitate wider participation of persons belonging to national minorities in elected bodies at central and local levels as well as to further improve the functioning of existing consultative bodies;

- take further steps to address the problems faced by the Crimean Tatars in relation to land claims by adopting legal norms relating to property restitution and providing for adequate compensation.

3. Invites the Government of Ukraine, in accordance with Resolution (97)10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in sections 1 and 2 above.

[1] This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2] In the context of adopting Resolution (97) 10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting parties casting a vote, including a majority of the representatives of the Contracting parties entitled to sit on the Committee of Ministers, vote in favour".

[3] **Paragraph no. 65 of the Second opinion of the Advisory Committee on Ukraine (CM(2008)116): "Legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards. In this context, the right balance must be struck between the legitimate aim to promote the use of the State language in various spheres of life and the necessity to provide for the use of minority languages in private and in public, as provided for by the Framework Convention."**

[4] ~~*inter alia*~~ **Especially**, decrees No's. 607 and 461 of the Ministry of Education adopted on 13 July 2007 and 26 May 2008, respectively.

APPENDIX B – ADOPTED RESOLUTIONS

Latvia

Resolution CM/ResCMN(2011)6 on the implementation of the Framework Convention for the Protection of National Minorities by Latvia

(Adopted by the Committee of Ministers on 30 March 2011
at the 1110th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution Res(97)10 of 17 September 1997 setting out the rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution Res(97)10;[1]

Having regard to the instrument of ratification submitted by Latvia on 6 June 2005;

Recalling that the Government of Latvia transmitted its state report in respect of the first monitoring cycle under the Framework Convention on 11 October 2006;

Whereas the Advisory Committee accepted the invitation of the Government of Latvia to send a delegation to gather further information in Latvia, this visit taking place from 9 to 13 June 2008;

Whereas the Advisory Committee's opinion on the implementation of the Framework Convention by Latvia was adopted on 8 October 2008 and then transmitted to the Permanent Representative of Latvia and communicated to the permanent representatives of all member states as document CM(2008)180;

Whereas the Government of Latvia submitted its written comments on the opinion of the Advisory Committee, these written comments having been communicated to the delegations of all member states on 25 May 2009 as document CM(2008)180 add;

Having examined the Advisory Committee's opinion and the written comments of the Government of Latvia;

Having also taken note of comments by other governments,

1. Adopts the following conclusions concerning the implementation of the Framework Convention by Latvia:

(1) Latvian authorities have made commendable efforts, in recent years, to promote the integration of society. Steps have also been taken to improve the legal and institutional framework for protection against discrimination and racism and the monitoring of the actual situation in this field should receive increased attention in the future. While efforts have been made by the government to support the preservation of the national minorities' specific cultures and identities, the significant reduction, in recent years, of state financial support for the organisations of national minorities is a source of concern.

(2) The inclusion of "non-citizens" identifying themselves with a national minority in the personal scope of application of the Framework Convention is to be welcomed. It is important to underline that such an approach is in line with the spirit of the Framework Convention. Nevertheless, due to specific exceptions under the Latvian law, these persons regrettably do not benefit from the protection of a number of provisions of the Framework

Convention, in particular those relating to effective participation in public life. Given the very large number of persons concerned, the authorities are encouraged to interpret and apply the relevant national legislation so as not to entail any disproportionate restrictions of the protection offered by the Framework Convention in respect of "non-citizens" identifying themselves with a national minority.

(3) Persons belonging to national minorities in Latvia do not fully benefit from important provisions of the Framework Convention relating to the use of their minority languages in dealings with the administrative authorities and to the use of minority languages alongside Latvian in local topographical indications. Efforts are needed in the legislative sphere and at the practical level to enable persons belonging to national minorities to use their languages in dealings with the administrative authorities and in topographical indications, according to the needs, in line with the conditions set out in Articles 10.2 and 11.3 of the Framework Convention. More generally, while protecting and strengthening Latvian as the state language is a legitimate aim, all due attention should be paid to the effective enjoyment of the right of persons belonging to national minorities to use freely their minority languages.

(4) It is essential to avoid language-based discrimination of persons belonging to national minorities in the labour market. In this respect, strengthening the language proficiency requirements in the employment field, especially with regard to private sector occupations but also with regard to certain occupations in the public sector, and the frequent use of punitive measures regarding monitoring of their observance, is a matter of deep concern. Increased public funding should be allocated to the teaching of Latvian for persons belonging to national minorities. Latvia is encouraged to favour a more constructive approach in this sphere, in particular through measures aimed to improve the accessibility of quality Latvian language teaching for those concerned. More generally, the effective participation of persons belonging to national minorities in social and economic life should receive increased attention. The situation of the Roma, who continue to face difficulties in employment, education and access to services, should be adequately addressed without further delay.

(5) Positive developments and challenges have been noted in the field of education. It is to be welcomed that in the state-funded education system, eight minority languages – Russian, Ukrainian, Belarusian, Lithuanian, Estonian, Polish, Hebrew and Romani – are used as languages of instruction. The Latvian authorities have undertaken efforts to train teachers for bilingual education and develop appropriate educational programmes. However, difficulties are reported as regards the availability of qualified teaching staff for bilingual education and of adequate educational materials, and the availability of teaching in minority languages in public schools is diminishing. Increased efforts are needed to ensure that the quality of instruction provided in minority education establishments is not lower than in schools with Latvian as a language of instruction. Adequate consultation with the representatives of national minorities is essential in this context. The obligation to use Latvian in the context of the secondary school final examination and the plan to introduce compulsory and exclusive use of Latvian in state funded private universities that have been using minority languages as languages of instruction, are a source of concern for national minorities. The promotion of the state language and its teaching as an instrument for integration in society is a legitimate aim. Nevertheless, measures taken in this context should be more balanced and take better account of the needs and rights of persons belonging to national minorities

(6) Shortcomings relating to the effective participation of persons belonging to national minorities in the decision-making process need to be addressed. The participation through the Council for Minority Participation or equivalent structures should be strengthened and made more efficient. A governmental structure in charge of national minority issues should be maintained, with an increased decision-making role on minority-related issues. The question of the participation in public affairs of "non-citizens" identifying themselves with national minorities, including the possibility for them to vote in local elections, remains a matter of serious discussion.

(7) In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in this regard, the number of "non-citizens" remains high and the lack of citizenship continues to have a detrimental impact on the enjoyment of the full and effective equality and social integration. The considerable number of children born in Latvia after 21 August 1991 who are still 'non-citizens' is a matter of deep concern. Particular

efforts are required in order to promote conditions more conducive to a genuine motivation for naturalisation. Latvia should address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures, including further language-training for the persons concerned, to promote naturalisation.

2. Recommends that Latvia take appropriate account of the conclusions set out in paragraph 1 above, together with the various comments in the Advisory Committee's opinion.

3. Invites the Government of Latvia, in accordance with Resolution Res(97)10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in paragraphs 1 and 2 above.

[1] In the context of adopting Resolution Res(97)10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two thirds of the representatives of the contracting parties casting a vote, including a majority of the representatives of the contracting parties entitled to sit on the Committee of Ministers, vote in favour".

Serbia

Resolution CM/ResCMN(2011)7 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia

(Adopted by the Committee of Ministers on 30 March 2011
at the 1110th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution Res(97)10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution Res(97)10;[1]

Having regard to the instrument of ratification submitted by Serbia on 11 May 2001;

Recalling that the Government of Serbia transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 4 March 2008;

Having examined the Advisory Committee's second opinion on Serbia adopted on 19 March 2009, and the written comments of the Government of Serbia received on 26 October 2009;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Serbia:

a) Positive developments

The Serbian legislative framework contains commendable guarantees regarding the protection of national minorities. This includes a detailed chapter on minority protection in the 2006 Constitution.

Serbia adopted the Law on Prohibition of Discrimination on 26 March 2009 and the Law on National Councils of National Minorities on 31 August 2009. A new Criminal Code was adopted with some important provisions as regards the prohibition of discrimination. The state level Ombudsman has started his work and is to launch promising initiatives in the field of monitoring national minority protection in all regions of Serbia.

Increased possibilities for persons belonging to national minorities to learn their language have been made available, in particular in the Province of Vojvodina.

Valuable initiatives have been taken by the authorities of the Province of Vojvodina to increase inter-ethnic dialogue.

Measures have been taken to increase signposting in minority languages, although some practical difficulties remain.

Positive steps have been taken to address the problems faced by Roma in their access to education, health, housing and employment.

Serbian public media includes a large and diverse programming in minority languages.

There have been welcome measures to increase participation of persons belonging to national minorities in decision making. The national minority councils which have been established so far have already contributed positively to addressing national minorities' needs, notably in the field of education and culture.

b) Issues of concern

Notwithstanding the overall progress, there still remains scope for improvement and further progress towards full implementation of the relevant norms and values in practice.

In its Resolution 1632 (2008), adopted on 1 October 2008 based on its special report on the "Situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia", the Parliamentary Assembly identified a list of concrete issues to be addressed in regard of the situation of national minorities in Serbia.

Some shortcomings and difficulties have been reported with regard to the participation of persons belonging to national minorities in the process of election of the National Councils of National Minorities.

Measures to increase intercultural dialogue have been largely limited to the Province of Vojvodina. A more active role of the central authorities in promoting mutual understanding throughout Serbia is needed.

While there are several positive experiences in some municipalities, engagement of local authorities in national minority issues is, on the whole, too limited and lacks continuity. There is a need to ensure a more consistent approach to the use of minority languages in the public sphere. The legal framework for the participation of national minorities through the councils for interethnic relations at the municipal level lacks clarity.

Acts of discrimination and violence against persons belonging to national minorities are still not sufficiently and adequately addressed by the judicial system. There is a need to increase the confidence of persons belonging to national minorities in referring cases alleging discrimination to the existing judicial and non-judicial mechanisms. Recent events have also shown that the approach of the police to interethnic issues is still not satisfactory.

Even though minority language education is in general well developed, the teaching of some minority languages and culture remains optional in the Serbian educational system. Further measures are needed to address the shortage of teachers and increase the availability of textbooks adapted to the Serbian curriculum. The issue of recognition of diplomas from educational institutions from the region has still not been approached in a comprehensive and satisfactory manner.

Persons belonging to the Roma minority still face discrimination in a number of fields, including health, employment and housing and the undue practice of channelling Roma children to “special schools” still continues to be reported.

The lack of personal identification documents of many Roma continues to hamper their access to fundamental social rights.

There are concerns about the consistency of the legal framework pertaining to minority language media. In addition, the exemption of minority media from the privatisation process has prompted criticism regarding its negative impact on the sustainability of private media outlets and its consequences in terms of media content.

The participation of persons belonging to national minorities in decision making could be made more effective and the numerically smaller minorities given more attention in this context. The representation of persons belonging to national minorities in the law enforcement structures and the judiciary remains to be further developed. Further information on the representation of persons belonging to national minorities in the public administration is needed in order to obtain a clear view on the situation in this field, while paying due attention to international standards in the field of data protection.

The situation of persons belonging to national minorities living in economically disadvantaged areas requires urgent attention and the adoption of temporary positive measures.

2. Adopts the following recommendations in respect of Serbia:

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

- ensure that conditions are in place for the effective implementation of the newly adopted Laws on the Prohibition of Discrimination and on the National Councils of National Minorities;

- consolidate the legislative framework regarding minority media in a way that maintains the obligation of the state to provide national minorities with adequate conditions to create and use their own media;

- ensure that acts of violence and discrimination against persons belonging to national minorities are adequately investigated by law enforcement bodies and the judiciary, notably by increasing awareness and training measures;

- expand the measures aimed at promoting tolerance and interethnic dialogue throughout Serbia;

- expand opportunities for minority language education, including by addressing the needs expressed by the Vlachs and other national minorities and review the current optional character of some minority language teaching in consultation with national minority representatives;

- ensure that legal and practical conditions are such that signposts in minority languages in the areas concerned can be put in place;

- address the issue of recognition of diplomas from educational institutions from the region in a comprehensive way and take measures to tackle the problems of delay and complexity of procedure which have been identified;

- ensure that measures to be taken in the context of the National Strategy on Roma are given adequate support by both central and local authorities in order to eliminate obstacles to the participation of the Roma in employment, housing, health and education;

- address as a matter of priority, both at legislative and practical level, the lack of personal identification documents of the Roma;

- pursue further efforts to increase the representation of national minorities in the judiciary and in law enforcement bodies and take steps to obtain a clear view on the representation of national minorities in the public administration;

- pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged areas and ensure that their representatives are adequately involved in both identifying priority projects to be funded and in their implementation in the areas concerned;

- take measures to increase the effectiveness of the councils of interethnic relations at municipal level, *inter alia*, by clarifying further their composition and functions.

3. Invites the Government of Serbia, in accordance with Resolution Res(97)10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in section 1 and 2 above.

[1] In the context of adopting Resolution Res(97)10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

The Ukraine

Resolution CM/ResCMN(2011)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine

(Adopted by the Committee of Ministers on 30 March 2011
at the 1110th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 24 to 26 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the Framework Convention");

Having regard to Resolution Res(97)10 of 17 September 1997 setting out rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention;

Having regard to the voting rule adopted in the context of adopting Resolution Res(97)10;[1]

Having regard to the instrument of ratification submitted by Ukraine on 26 January 1998;

Recalling that the Government of Ukraine transmitted its state report in respect of the second monitoring cycle under the Framework Convention on 8 June 2006;

Having examined the Advisory Committee's second opinion on Ukraine adopted on 30 May 2008, and the written comments of the Government of Ukraine, received on 19 November 2008;

Having also taken note of comments by other governments,

1. Adopts the following conclusions in respect of Ukraine:

a) Positive developments

Ukraine has continued to pay due attention to the protection of national minorities and some steps have been taken to reform the existing legislative framework pertaining to minority protection. For example, the draft Concept on Ethnic Policy, which provides for a number of measures conducive to strengthening intercultural and interethnic dialogue, has been finalised and a wide public discussion is now due to start on this document.

Some improvements have been noted with regard to the Crimean Tatars and other formerly deported peoples, such as the granting of Ukrainian citizenship to the vast majority of those who have returned to Ukraine.

Regional initiatives and programmes targeting persons belonging to some minorities, such as the Roma and the Crimean Tatars, have been implemented in some regions with a view to improving their situation in various fields, including health care and education.

Ukraine has continued to provide state funding for cultural initiatives of national minorities and the procedure relating to the allocation of financial support has been made more open and transparent.

Efforts have been made by the Ukrainian authorities to promote intercultural and interethnic dialogue, as well as to monitor hate speech in print and electronic media, including on the internet. A promising Action Plan on Countering Racism was adopted in 2007.

The process of restoring historical names in minority languages in compact settlement of national minorities has been pursued.

Additional textbooks for educational institutions with minority languages have been developed since 2002 and the authorities have pledged to intensify their efforts in this field.

The Consultative Council of Minority Representatives has recently resumed its work and gained more independence. It is being increasingly consulted by the authorities on issues affecting them.

b) Issues of concern

Apart from some legislative initiatives, there have been no major developments in the legislation pertaining to national minorities. The current legislative framework is partly outdated, lacks coherence and contains a number of shortcomings. There is, therefore, a vital need to adapt the national legislation, including the law on national minorities, to the relevant international standards, including the Framework Convention. Additionally, the authorities are encouraged to pursue further their inclusive approach with regard to the implementation of the Framework Convention, as mentioned in the opinion of the Advisory Committee.

The right balance needs to be struck between the legitimate aim to promote the use of the Ukrainian language and the necessity to support the use of minority languages in various fields of public life. Ongoing reforms should be pursued in accordance with a coherent and comprehensive language policy, which remains to be developed. It is essential that the principles underlying such a policy enjoy broader consensus to ensure a stronger sense of ownership by the population, including persons belonging to national minorities, in accordance with Article 5 paragraph 1 of the Framework Convention.

Ukraine has still not adopted comprehensive civil and administrative provisions pertaining to discrimination and the lack of reliable statistical data on instances of discrimination makes it difficult to develop targeted policies in this field.

The Roma have continued to face severe social and economic difficulties, which hamper their integration into Ukrainian society. Further efforts to encourage the attendance of Roma children in pre-school education as well as to integrate them in mainstream schools are required.

There has been a worrying increase in the number of racially motivated acts and manifestations of hostility targeted at various groups, including persons belonging to certain national minorities. It is essential to increase the attention with which such incidents are investigated and the perpetrators prosecuted. Awareness-raising measures should be developed among the authorities concerned.

A lack of financial support from the state makes it difficult for some national minorities to maintain and restore their cultural monuments and cemeteries. Some defacing of religious and minority sites has been reported, including in Crimea.

The legal possibility to apply language quotas to promote the use of the state language in radio and television broadcasts raises serious problems under the Framework Convention, especially with regard to private operators. There is a need to address increasing difficulties encountered in producing and broadcasting television programmes and in distributing films in minority languages.

The share of instruction in the Ukrainian language has continued to increase at all levels of education while, according to the assessment made by persons belonging to some national minorities, instruction in minority languages has been decreasing. It is important to ensure that any measures taken with regard to the language of the final secondary education examinations, whether or not they have an impact on access to higher education institutions, do not have an adverse effect on minority language education at secondary level by lowering the interest for such education. The shortage of quality textbooks and qualified teachers for teaching in minority language persists.

While it is legitimate for the Ukrainian authorities to promote the use of the state language, the ongoing reforms in the field of education should not have a negative impact, for persons belonging to national minorities, on equal opportunities in accessing higher education according to their needs. Any reform conducive to strengthening the state language in educational institutions needs to be introduced gradually, taking into account the rights of persons belonging to national minorities in accordance with Article 14 of the Framework Convention for the Protection of National Minorities, and accompanying measures should allow students to acquire a better proficiency in the state language.

The participation of persons belonging to national minorities in public affairs has been hampered following legislative changes in 2004, which introduced an electoral system of pure proportional representation in one nationwide constituency. A more inclusive participation of Roma organisations should be ensured in the work of the Council of representatives of associations of national minorities in Ukraine, as well as in the context of ad hoc consultations by the authorities.

Problems relating to access to land by Crimean Tatars have largely remained unsolved in Crimea. No legal norms relating to restitution of property to formerly deported peoples have been adopted so far.

2. Adopts the following recommendations in respect of Ukraine:

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

- improve, as a matter of priority, the legislative framework pertaining to minority issues, in particular in the field of education and media, and bring it in line with relevant international norms, including those relating to the Framework Convention, as recommended in the opinion of the Advisory Committee;[2]

- complement, where appropriate, legislative provisions pertaining to discrimination and introduce additional measures to promote full and effective equality;

- strengthen efforts to improve the social and economic situation of persons belonging to disadvantaged minorities, particularly the Roma and the Crimean Tatars;

- increase the attention with which racially motivated incidents are investigated and the perpetrators prosecuted while stepping up awareness-raising activities among law enforcement officers, prosecutors and judges;

- take effective measures to ensure that policies to promote the use of the state language fully respect the language-related rights of persons belonging to national minorities, as guaranteed by the Framework Convention;

- examine the possibility of resorting to incentive-based measures and voluntary methods to promote the use of the state language in the media and take measures to address difficulties relating to the production and broadcasting of television programmes as well as to the distribution of films in minority languages;

- ensure that initiatives aimed at promoting the Ukrainian language in education do not result in limitations for the right to minority language education and review, in consultation with persons belonging to national minorities, the legal framework pertaining to minority education, including higher education;

- increase efforts to promote equal opportunities for access to education at all levels for persons belonging to national minorities, including by providing adequate response to the needs of national minorities in higher education.

- increase efforts to provide quality textbooks and qualified teachers for minority language education;

- create conditions to facilitate wider participation of persons belonging to national minorities in elected bodies at central and local levels as well as to further improve the functioning of existing consultative bodies;

- take further steps to address the problems faced by the Crimean Tatars in relation to land claims by adopting legal norms relating to property restitution and providing for adequate compensation.

3. Invites the Government of Ukraine, in accordance with Resolution Res(97)10:

a. to continue the dialogue in progress with the Advisory Committee;

b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in sections 1 and 2 above.

[1] In the context of adopting Resolution Res(97)10 on 17 September 1997, the Committee of Ministers also adopted the following rule: "Decisions pursuant to Articles 24.1 and 25.2 of the Framework Convention shall be considered to be adopted if two-thirds of the representatives of the Contracting Parties casting a vote, including a majority of the representatives of the Contracting Parties entitled to sit on the Committee of Ministers, vote in favour".

[2] Paragraph 65 of the 2nd opinion of the Advisory Committee on Ukraine (CM(2008)116): "Legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards. In this context, the right balance must be struck between the legitimate aim to promote the use of the state language in various spheres of life and the necessity to provide for the use of minority languages in private and in public, as provided for by the Framework Convention."

APPENDIX C – OTHER TEXTS

Recommendation 1904 (2010)

Minority protection in Europe: best practices and deficiencies in implementation of common standards

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1. Referring to its Resolution 1713 (2010), the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. enhance efforts aimed at the speedy ratification of the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter for Regional or Minority Languages (ETS No. 148) and Protocol No. 12 to the European Convention on Human Rights (ETS No. 177);

1.2. invite the member states to accede to the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and to the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

1.3. strengthen the Council of Europe's work on intercultural dialogue and education aimed at fostering respect for diversity and societal cohesion, in particular through teacher training and life-long learning;

1.4. pursue co-operation with other international organisations, in particular the European Union, the Organization for Security and Co-operation in Europe and the United Nations, with a view to achieving coherent interpretation of standards and implementing common policies in the field of the protection of national minorities.

2. Moreover, recalling the necessity of ensuring the proper implementation of the Framework Convention according to the principles enshrined in its Article 2, the Assembly recommends that the Committee of Ministers:

2.1. take the necessary measures to ensure that information of relevance to the implementation of the Framework Convention is submitted by states parties to the Secretary General in good time;

2.2. ensure the earliest and widest possible availability of information on good practices in the implementation of the Framework Convention;

2.3. encourage the advisory committee of the Framework Convention to prepare thematic reports so as to assist states and minorities in developing good practices for specific issues, in particular minority groups' participation in socio-economic and cultural life.

Resolution 1632 (2008)

Situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia

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1. The Parliamentary Assembly notes that Europe's societies are today multicultural and multi-ethnic in character.

2. It resolutely defends cultural diversity, the importance of which is highlighted in several Council of Europe instruments and especially the Framework Convention for the Protection of National Minorities (ETS No. 157) and in the European Charter for Regional or Minority Languages (ETS No. 148).

3. Diversity is not to be perceived as a threat, but as a source of enrichment. It should be respected and preserved as a fundamental component of any democratic society. Upholding the principles of human rights, rule of law and democracy is the best guarantee of respect for diversity.

4. Serbia, like the entire region of the Balkans, is one of Europe's most multicultural countries. It must take up the inherent challenges of all multicultural societies by promoting a vision of society founded on respect for diversity, and by combating all forms of intolerance and discrimination.

5. The region, Serbia included, remains marked by interethnic tensions. Even today, ethnic incidents, with varying degrees of intensity, are recorded in Serbia.

6. The Assembly stresses that intercultural dialogue and respect for the diversity of cultures are guarantees of long-term peace and stability in the region.

7. Whereas ethnic incidents are currently few in the Serbian province of Vojvodina, a province whose composite ethnic make-up is one of the most pronounced in Serbia, it must be noted that in 2004 – a period marked by numerous and alarming interethnic incidents – the authorities reacted far too tardily.

8. The Assembly urges the Serbian authorities to react at all times with great celerity and firmness against the perpetrators of interethnic violence in all its forms.

9. The Assembly welcomes the fact that a number of praiseworthy initiatives, including the 2002 legislative package and the new 2006 Serbian Constitution, have been taken to advance the rights of national minorities, and encourages the authorities to pursue their efforts.

10. In this respect, the Assembly is very pleased to note that, since the last elections, the position of Minister for Human and Minority Rights has been reinstated and that the representatives of minorities are part of the ruling coalition with ministerial mandates.

11. These efforts should be backed up by a communication policy on the part of the state authorities, religious institutions and the media to promote the spirit of tolerance and intercultural dialogue and to combat discrimination.

12. The Assembly is pleased to note that a draft law against discrimination has been prepared and submitted for comment to the European Commission for Democracy through Law (Venice Commission). The speedy adoption and implementation of this law is especially important for the prevention of any future discrimination against members of national minorities.

13. The Assembly is of the opinion that the ombudsman could and should perform an important role here. It therefore welcomes the long-awaited appointment of the Ombudsman of the Republic of Serbia on 29 June 2007.

14. Furthermore, the authorities must continue their efforts in building minorities' confidence in the state's representatives and combating prejudice against minorities that may persist within the law enforcement agencies and the judiciary. The Assembly welcomes the existence of a programme to increase the representation of members of minorities in the police and judicial establishments, notably the establishment of a multi-ethnic police force in southern Serbia. It encourages the authorities to extend and apply this initiative to other regions and especially Vojvodina.

15. The Assembly is nonetheless concerned to observe serious deficiencies in making minority rights a reality. It is the duty of the national, regional and local authorities to ensure full implementation of the relevant legislative provisions.

16. Some legislative provisions have been lacking for several years, and this prevents the potential of the legislative framework developed in 2002 from being exploited to the best effect for the benefit of members of minorities.

17. The Assembly is of the opinion that these shortcomings in the legislative apparatus impair the credibility of the authorities' political will as regards minority rights and is not conducive to building the confidence of the members of national minorities in the authorities.

18. The Assembly is also concerned about divergences observed between regions in the enforcement of the rights of minorities and in the effective access to those rights for their members. It observes, in particular, that the members of national minorities in eastern Serbia are in a distinctly less favourable position than those of Vojvodina.

19. As to the question of the identity of minorities, and especially with regard to the debate over the Romanian and Vlach minorities, the Assembly recalls the principle set out in Article 3 of the Framework Convention for the Protection of National Minorities and reaffirms that any attempt to impose an identity on a person, or on a group of persons, is inadmissible.

20. The Assembly therefore encourages the members of the Romanian and Vlach minorities in eastern Serbia to combine their efforts and overcome their internal disagreements in their own interest and in order to preserve the distinctive traits that make up their identities. Here the Serbian authorities have a duty not to impede but to support initiatives in that direction.

21. The Assembly is aware of the concerns raised by the Venice Commission about the 2006 Law on Churches and Religious Organisations in the Republic of Serbia and shares its recommendation that a more precise conception of the legal status of canon laws and ecclesiastical decisions be provided. Furthermore, the Assembly urges the Serbian authorities to co-operate with both the Serbian Orthodox Church and the Romanian Orthodox Church in finding a practical solution whereby freedom of religion is made a reality in eastern Serbia, as it is already the case in Vojvodina.

22. Finally, aware that co-operation between the state of residence and the kin-state under bilateral agreements is of real value in guaranteeing stability in Europe, the Assembly calls upon the Serbian authorities to intensify their good neighbourly relations with the kin-states (Romania, Hungary, Croatia and "the former Yugoslav Republic of Macedonia") by fully implementing the bilateral agreements which they have signed. The same applies to the authorities of the kin-states.

23. Accordingly, the Assembly invites the competent authorities of the Republic of Serbia to:

23.1. pay greater attention to allegations of interethnic violence and deal with them expeditiously, firmly and efficaciously, particularly by means of effective police investigations and judicial proceedings;

23.2. ensure that the legislation on the rights of minorities, particularly the laws enacted in 2002, are effectively implemented;

23.3. establish as speedily as possible the fund for promoting the social, economic, cultural and general development of national minorities provided for in section 20 of the 2002 Framework Law on the Protection of the Rights and Freedoms of National Minorities;

23.4. rapidly pass a law against discrimination, taking into account the comments made by the Venice Commission;

23.5. adopt as a matter of priority the legislative texts on the election, competences and financing of the national councils for national minorities, taking account of the comments by Council of Europe experts on the draft law on elections;

23.6. define more precisely the functions and obligations of the various national councils for national minorities while granting them the necessary funds to accomplish their missions;

23.7. introduce a mechanism enabling the various national councils for national minorities to supervise the acts of the executive with regard to the rights of minorities;

23.8. convene more frequent and regular meetings of the National Council for National Minorities;

23.9. consider appointing a deputy ombudsman in charge of questions relating to the rights of minorities;

23.10. while acknowledging the improvements contained in the new constitution in this respect, further strengthen the stability of the budgets of the autonomous provinces;

23.11. take positive measures in favour of all persons belonging to national minorities, and to eradicate all discrimination against their members;

23.12. intensify their efforts for the furtherance of initiatives to promote a spirit of tolerance and intercultural dialogue;

23.13. step up initiatives to train teachers with the requisite qualifications for language teaching and teaching in minority languages;

23.14. continue developing bilingual and mother-tongue schools;

23.15. eliminate the regional differences that exist in effective safeguards for the rights of minorities (particularly for the use of minority languages in public administration, education in minority languages, freedom of religion, etc.) by the full application throughout the territory of the existing legislation in these matters;

23.16. take the necessary measures in order to facilitate, for the Vlachs/Romanians living in eastern Serbia (the Timoc, Morava and Danube valleys), access to education, the media and public administration in their mother tongue and to enable them to hold religious services in that language;

23.17. identify and apply technical solutions which would enable persons living in eastern Serbia to receive broadcasts in Romanian produced in Vojvodina;

23.18. provide for exceptions to the media privatisation procedures for the benefit of the media operating in minority languages, in order to ensure their viability.

24. The Assembly also calls upon Serbia and the kin-states concerned to convene as early as possible the joint intergovernmental committees provided for in the bilateral agreements concluded by them on co-operation in the field of the protection of national minorities.

25. The Assembly invites its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to take proper account of the proposals contained in this resolution while conducting its dialogue with the Serbian authorities.

APPENDIX D – OVERVIEW TABLES

Georgia							
Signed: 21/01/2000 - Ratified: 22/12/12005 - entry into force: 01/04/2006							
Cycle	State Report	Opinion	State Comments	GR-H meetings	CM meetings	Resolution	Comments on research and data collection
1st	16/07/2007	19/03/2009	16/09/2009	2/2/2010 23/3/2010 15/4/2010 18/5/2010 21/0/2010 2/11/2010 7/12/2010 2/2/2011 17/3/2011			2011 data restricted after March 2011 Substantive issues: 2008 war and kin-state relations
2nd	Due on 01/04/2012						

Latvia							
Signed: 11/05/1995 - Ratified: 06/06/2005 - entry into force: 01/10/2005							
Cycle	State Report	Opinion	Comments	GR-H meetings	CM meetings	Resolution	Comments on research and data collection
1st	11/10/2006	09/10/2008	18/05/2009	18/6/2009 22/9/2009 18/5/2010 21/5/2010 15/6/2010 21/9/2010 2/11/2010 7/12/2010		30/03/2011	Substantive issues: kin-state relations and grievances
2nd	Due on 01/10/2011						

Lithuania							
Signed: 01/02/1995 - Ratified: 23/03/2000 - entry into force: 01/07/2000							
Cycle	State Report	Opinion	Comments	GR-H meetings	CM meetings	Resolution	Comments on research and data collection
1st	31/10/2001	21/02/2003				10/12/2003	
2nd	03/11/2006	28/02/2008	20/10/2008	28/10/2008 9/12/2008 3/2/2009 10/3/2009 18/6/2009 21/9/2010 7/12/2010			Not on agenda for half of 2009 and all of 2010 2011 not accessible
3rd	21/09/2011						

Poland							
Signed: 01/02/1995 - Ratified: 20/12/2000 - entry into force: 01/04/2001							
Cycle	State Report	Opinion	Comments	GR-H Meetings	CM Meetings	Resolution	Comments on research and data collection
1st	10/07/2002	27/11/2003				30/09/2004	
2nd	08/11/2007 Annexes	20/03/2009	07/12/2009	2/2/2010 23/3/2010 15/4/2010 18/5/2010 15/6/2010 21/9/2010 2/11/2010 3/2/2011			
3rd	Due on 01/04/2012						

Serbia							
Accession: 11/05/2001 - entry into force: 01/09/2001							
Cycle	State Report	Opinion	Comments	GR-H meetings	CM meetings	Resolution	Comments on research and data collection
1st	16/10/2002	27/11/2003	29/04/2004			17/11/2004	
2nd	04/03/2008	19/03/2009	26/10/2009	2/2/2010 18/5/2010 15/6/2010 21/9/2010 7/12/2010 20/1/2011		30/03/2011	
3rd	Due on 01/09/2012						

Ukraine							
Signed: 15/09/1995 - Ratified: 26/01/1998 - entry into force: 01/05/1998							
Cycle	State Report	Opinion	Comments	GR-H meetings	CM meetings	Resolution	Comments on research and data collection
1st	02/11/1999	01/03/2002				05/02/2003	
2nd	08/06/2006	30/05/2008	19/11/2008	3/2/2009 10/3/2009 2/4/2009 14/4/2009 18/6/2009 7/7/2009 22/09/2009 11/3/2010 (informal) 18/3/2010 (informal) 23/3/2010 7/12/2011 31/1/2011 (informal) 11/2/2011 (informal) 17/2/2011 (open cons.) 14/3/2011 17/3/2011	7/10/2009 22/2/2010 (Bureau)	30/03/2011	2010 procedural debate on repercussions for not adopting resolutions starts due to the Ukraine case 2010 discussions on Ukraine not transparent from data
3rd	07/05/2009						

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