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**SECOND REPORT SUBMITTED BY SWITZERLAND  
PURSUANT TO ARTICLE 25, PARAGRAPH 2  
OF THE FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES**

(received 31 January 2007)

**The Swiss Government's Second Report  
on implementation of the Council of Europe's  
Framework Convention for the Protection  
of National Minorities**

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## INTRODUCTION

### A. General remarks

1. Switzerland ratified the Council of Europe's Framework Convention for the Protection of National Minorities on 21 October 1998. The Framework Convention came into force in Switzerland on 1 February 1999. On 16 May 2001, the Swiss Government delivered its state report for the first monitoring cycle of the Framework Convention. On 10 December 2003, the Committee of Ministers adopted Resolution ResCMN(2003)13 on the implementation of the Framework Convention by Switzerland. On 22 June 2004, the President of the Advisory Committee sent Switzerland, through its Permanent Representative in Strasbourg, a country-specific questionnaire that had been adopted by the Committee at its meeting of 24 May 2004.

2. Switzerland presents its second state report below. This has been drafted in accordance with the "Outline for state reports to be submitted under the second monitoring cycle" adopted by the Committee of Ministers on 15 January 2003. It therefore focuses on measures taken to act on the Committee of Ministers' conclusions at the end of the first cycle and on the main article-by-article comments in the Opinion of the Advisory Committee on the Framework Convention dated 20 February 2003.

3. This second report has been compiled on the basis of contributions from various departments of the federal administration, in particular:

- *on behalf of the Federal Department of Foreign Affairs:* the Directorate of International Public Law (DDIP, which co-ordinated the contributions and wrote the report); the Directorate of Political Affairs, Division I (Council of Europe Section) and Division IV (Human Rights Policy Section); and Switzerland's Permanent Representation to the Council of Europe;
- *on behalf of the Federal Department of Home Affairs:* the Federal Office of Culture; the Service for Combating Racism; and the Federal Statistical Office;
- *the Federal Commission against Racism;*
- *on behalf of the Federal Department of Justice and Police:* the Federal Office of Justice and the Federal Office for Migration;
- *on behalf of the Federal Department of Economic Affairs:* the State Secretariat for Economic Affairs and the Federal Veterinary Office;
- *on behalf of the Federal Department of Finance:* the Federal Office of Personnel;
- *on behalf of the Federal Department of the Environment, Transport, Energy and Communications:* the Federal Office for Spatial Development.

In addition, all cantons, as well as some of the intercantonal conferences<sup>1</sup>, were consulted twice: firstly to answer a number of questions on implementation of the Framework Convention, and secondly in order for them to submit their comments on the draft version of this report.

The “Association of Travellers” umbrella organisation for Travellers<sup>2</sup>, and the “A Future for Swiss Travellers” foundation<sup>3</sup> have also played a part in preparation of this report by replying to a questionnaire and commenting on the initial version of the report. The latter was also submitted to the Swiss Federation of Jewish Communities, the Action Sinti et Jenisch Suisses association (“Swiss Yenish and Sinti Action”), and the Schäft Qwant association (“Transnational Association for Yenish Co-operation and Cultural Exchange”), as well as Menschenrechte Schweiz, MERS (Human Rights Switzerland), the Society for Threatened Peoples and the Society for Minorities in Switzerland.

4. This report, drafted and published in the Swiss Confederation’s three official languages (French, German and Italian), can be consulted by a wide audience on the official website of the Federal Department of Foreign Affairs<sup>4</sup>. The results of the Council of Europe authorities’ consideration of this report will also be published there forthwith in order to foster public debate on the current situation, development and problems regarding protection of national minorities in Switzerland.

## **B. Latest relevant statistical data**

### ***Resident population by main language and religion***

Language (2000)	German: 63.7% French: 20.4% Italian: 6.5% Romansh: 0.5% Other: 9%
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<sup>1</sup> Conference of Cantonal Governments; Swiss Conference of Cantonal Ministers of Education (CDIP); Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP); Swiss Conference of Heads of Cantonal Departments of Justice and Police (CCDJP).

<sup>2</sup> In this context, see the Swiss government’s initial report of April 2001, p. 43 § 143; see also the supplementary information of August 2002 relating to the initial report, § 218 (p. 72, French only).

<sup>3</sup> In this context, see the Swiss government’s initial report of April 2001, p. 43, § 144; see also the supplementary information of August 2002 relating to the initial report, § 217 (p. 71, French only).

<sup>4</sup> See <http://www.eda.admin.ch/eda/fr/home/topics/intorg/euroc/mistr/coswtr.html> (in French).

Religion (2000):	Roman Catholic: 41.8% Protestant: 35.3% Muslim: 4.3% Christian Orthodox: 1.8% Jewish: 0.2% Christian Catholic: 0.2% No religion: 11.1% Other religions: 1% No details given: 4.3%
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Source: 2000 federal census, Federal Statistical Office<sup>5</sup>

**Main languages by canton (canton populations and percentages), 2000**

	Total	German (%)	French (%)	Italian (%)	Romansh (%)	Non-national languages (%)
<b>German-speaking cantons</b>						
Uri	34 777	93.5	0.2	1.3	0.1	4.8
Appenzell Inner R.	14 618	92.9	0.2	0.9	0.1	5.9
Nidwalden	37 235	92.5	0.6	1.4	0.1	5.3
Obwalden	32 427	92.3	0.4	1.0	0.1	6.2
Appenzell Outer R.	53 504	91.2	0.3	1.7	0.1	6.6
Schwyz	128 704	89.9	0.4	1.9	0.2	7.6
Lucerne	350 504	88.9	0.6	1.9	0.1	8.5
Thurgau	228 875	88.5	0.4	2.8	0.1	8.2
Solothurn	244 341	88.3	1.0	3.1	0.1	7.5
St Gallen	452 837	88.0	0.4	2.3	0.2	9.0
Schaffhausen	73 392	87.6	0.5	2.6	0.1	9.2
Basle-Rural	259 374	87.2	1.5	3.5	0.1	7.7
Aargau	547 493	87.1	0.8	3.3	0.1	8.7
Glarus	38 183	85.8	0.3	4.4	0.1	9.3
Zug	100 052	85.1	1.1	2.5	0.2	11.1
Zürich	1 247 906	83.4	1.4	4.0	0.2	11.0
Basle-City	188 079	79.3	2.5	5.0	0.1	13.1
<b>French-speaking cantons</b>						
Jura	68 224	4.4	90.0	1.8	0.0	3.8
Neuchâtel	167 949	4.1	85.3	3.2	0.1	7.4
Vaud	640 657	4.7	81.8	2.9	0.0	10.5
Geneva	413 673	3.9	75.8	3.7	0.1	16.6

<sup>5</sup> Switzerland's initial report gave statistical data based on the 1990 census. See also the Federal Statistical Office's website:  
 Language: <http://www.bfs.admin.ch/bfs/portal/en/index/themen/volkszaehlung/uebersicht/blank/kennzahlen0/sprache/01.html>;  
 Religion: <http://www.bfs.admin.ch/bfs/portal/en/index/themen/volkszaehlung/uebersicht/blank/kennzahlen0/religionszugehoerigkeit.html>

<b>Italian-speaking cantons</b>						
<b>Ticino</b>	306 846	8.3	1.6	83.1	0.1	6.8
<b>Multilingual cantons</b>						
<b>Berne</b>	957 197	84.0	7.6	2.0	0.1	6.3
<b>Graubünden</b>	187 058	68.3	0.5	10.2	14.5	6.5
<b>Fribourg</b>	241 706	29.2	63.2	1.3	0.1	6.2
<b>Valais</b>	272 399	28.4	62.8	2.2	0.0	6.6
<b>Switzerland</b>						
<b>Total</b>	7 288 010	63.7	20.4	6.5	0.5	9.0

Source: 2000 federal census, Federal Statistical Office

## I. PART ONE

### *Practical arrangements made at national level for following up the results of the first monitoring cycle on the implementation of the Framework Convention*

#### **A. Publicising the results of the first monitoring cycle**

5. The *Opinion on Switzerland* drafted in French and English, and adopted by the Advisory Committee on 20 February 2003, has been translated into German and Italian by the Confederation. The Swiss Government's comments on this Opinion (August 2003) were written in the Confederation's three official languages: French, German and Italian. All these documents were published on the official website of the Directorate of International Public Law of the Federal Department of Foreign Affairs once the Government's comments had been sent to the Council of Europe authorities. This publication was specifically drawn to the attention of the Federal Offices, cantons and intercantonal conferences which had taken part in the first-cycle procedure, in a letter dated 21 August 2003.

6. *The Resolution of the Committee of Ministers* on implementation of the Framework Convention by Switzerland was translated into German and Italian by the Confederation. It was published on the website of the Directorate of International Public Law in these two languages as well as French and English,. A copy in all four languages was also sent to the Federal Offices concerned.

Every Swiss canton received a letter drafted in its own official language(s) drawing its attention to the Resolution, a copy of which was forwarded in the same language(s). The cantons were then in turn requested to take the necessary steps to publicise the Resolution at municipal level, among representatives of the minorities in their region and among the various regional bodies working to defend minorities. Similarly, letters were sent to the Swiss Conference of Cantonal Ministers of Education (CDIP), the Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP) and the Swiss Conference of Heads of Cantonal Departments of Justice and Police (CCDJP) drawing attention to the problems that they should address, especially those facing Travellers. Appended to these letters were the Committee of Ministers Resolution in French, German and Italian, together with the Advisory Committee's Opinion in the same three languages.

The publication of the Committee of Ministers Resolution on the website of the Directorate of International Public Law was notified in writing to Human Rights Switzerland as well as to the representatives of minorities and the bodies working to protect national minorities who/which had taken part in the discussion on implementation of the Framework Convention during the first cycle and/or had met the Advisory Committee delegation during its visit to Switzerland in November 2002. They were then sent a copy of the Resolution in the appropriate language(s).

7. The cantons, for their part, chose different channels for publicising the results of the first monitoring cycle. Thus the documents sent to them by the Federal Department of Foreign

Affairs were in turn forwarded, depending on the circumstances, to various cantonal departments, to members of the cantonal parliament, to municipalities and/or the cantonal federation of municipalities, to supraregional organisations which protect and promote minority languages, to the offices of representatives of minority groups, etc. A number of cantons decided not to engage in broad publicity, opting to confine themselves to targeted activities in fields of specific concern to them.

## **B. Follow-up activities at national, regional and local levels**

8. At national level, mention must be made of the *Federal Council's report on the situation of Travellers in Switzerland*. As will be explained in detail below (see Part Two below, *re* Article 5, 2.1.4, § 33ff.), this report was drawn up for two reasons. On the one hand, it was a matter of studying the implications for Travellers in Switzerland of possible ratification of International Labour Organization Convention No. 169 concerning indigenous and tribal peoples (Part 1 of the report). On the other hand, it was a case of responding to a request by parliament in July 2003 for the Federal Council to submit a report on the current situation of Travellers in Switzerland and the various forms of discrimination that they faced, also covering national measures to combat this discrimination and improve Travellers' living conditions (Part 2 of the report). Part 2 of the report focuses on the Confederation's policy options with regard to the main problem facing Travellers in Switzerland, namely the lack of stopping places and transit sites. In support of its conclusions and proposals, the report on several occasions draws on the Advisory Committee's findings and comments on the situation of Travellers in its Opinion on Switzerland dated 20 February 2003. The range of measures recommended in the report to combat discrimination against Travellers and improve their living conditions will be presented below, in the second part of the present report.

It should also be noted that, to raise awareness of the issues on which the Council of Europe authorities had called for progress, and for the purpose of drafting the present report, all the cantons, intercantonal conferences and Federal Offices concerned received *detailed questionnaires* on how they intended to act on the findings of the first cycle or, where appropriate, how they had already done so. Travellers' representatives also received similar questionnaires to use to review their current situation, any changes that had occurred, the problems noted by the Council of Europe authorities and possible or desirable solutions from their point of view.

9. At cantonal level, practical follow-up activities were organised, depending on the circumstances, in those fields directly affecting the cantons. These measures will be explained later, in the second part of this report. With regard to the persons and authorities involved in the follow-up activities, it may be pointed out that working parties and other co-operation arrangements have been established to improve the situation of Travellers, in which the latter have generally been closely or more loosely involved (for example in Aargau, Thurgau, Jura and Fribourg). In some cantons (such as St Gallen) this type of co-operation was already on the political agenda. A survey of municipalities has also been conducted by other cantons (such as Solothurn) concerning Travellers' specific living conditions.

### **C. Steps taken to improve participation by members of civil society in the process of implementing the Framework Convention**

10. During the first monitoring cycle, representatives of national minorities protected by the Framework Convention for the Protection of National Minorities, together with Human Rights Switzerland, were involved in discussions during the Advisory Committee's visit, and they were subsequently consulted when the federal authorities wished to obtain the supplementary information required after the initial report had been submitted.

In order to have up-to-date information on the situation and needs of Travellers for this report, the Directorate of International Public Law sent detailed questionnaires to the "A Future for Swiss Travellers" foundation and the Travellers' umbrella organisation, the Association of Travellers.

As mentioned above, these organisations, together with the Action Sinti et Jenisch Suisses association ("Swiss Yenish and Sinti Action"), the Schäft Qwant association ("Transnational Association for Yenish Co-operation and Cultural Exchange"), the Swiss Federation of Jewish Communities, Human Rights Switzerland (Menschenrechte Schweiz, MERS), the Swiss Society for Threatened Peoples and the Society for Minorities in Switzerland, were consulted about the first version of this report.

11. It must also be pointed out here that the Federal Office of Culture and the State Secretariat for Economic Affairs contacted the bodies responsible for representing Travellers' interests for the purposes of the Federal Council report on the situation of Travellers in Switzerland (see B above, § 8, and Part Two below, *re* Article 5, 2.1.4, § 33ff.). These bodies, together with other Travellers' organisations, were subsequently consulted as part of the formal consultation procedure launched on this question by the Federal Council on 22 June 2005.

12. For their part, some cantons have endeavoured to involve Travellers' organisations more closely in discussions on establishing new stopping places and transit sites, as will be explained below (Part Two, *re* Article 15, Section 2, § 98).

Attention may also be drawn to various measures taken in the canton of Graubünden to enable bodies protecting and promoting minority languages to participate extensively in the various stages of the procedure for adopting the new cantonal Languages Act.

### **D. Steps taken to continue the dialogue in progress with the Advisory Committee**

13. To follow up the results of the first cycle, Switzerland opted for ad hoc dialogue with the Advisory Committee in fields where relevant developments have taken place or are planned. Thus, in a letter dated 30 January 2006, the Directorate of International Public Law took the initiative of providing the President of the Advisory Committee with information about the consultation procedure for the preliminary draft of the Federal Council report on the situation of Travellers in Switzerland, as well as about the revival, through a parliamentary proposal, of the draft federal legislation on national languages and understanding between linguistic communities. This type of dialogue accords with Advisory Committee proposals in this field

(see, for example, the Advisory Committee's Fourth Activity Report, covering 1 June 2002 to 31 May 2004, § 20).

## II. PART TWO

### *Measures taken to improve implementation of the Framework Convention in response to the Resolution on Switzerland adopted by the Committee of Ministers on 10 December 2003*

#### **A. General presentation of the measures taken to act on the Committee of Ministers' conclusions**

14. In the Resolution that it adopted on 10 December 2003, the Committee of Ministers began by noting that Switzerland had made particularly commendable efforts in a number of fields in respect of its linguistic minorities. The institutional framework enabled the latter to preserve and develop the essential elements of their identities, in particular their language and culture. Moreover, a number of institutional arrangements ensured an extensive political participation of linguistic minorities at all levels (Conclusion No. 1).

The Committee of Ministers considered that the legal guarantees concerning the use of minority languages in relations with the administrative authorities were very extensive, and, in particular, numerous efforts had been made to reinforce the position of Romansh. However, it pointed out that increased attention might be given to the principles enshrined in the Framework Convention when it came to authorising, at the infracantonal level, the use of a minority language in relations with the administrative authorities (Conclusion No. 2).

Similarly, in the field of education, the needs of persons belonging to linguistic minorities as regards instruction in a minority language outside its area of traditional establishment should be better taken into account, especially for Italian and Romansh speakers. In the canton of Graubünden, the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level (Conclusion No. 3).

15. The Committee of Ministers held that there was scope for improvement in order to make it possible for Travellers to develop the essential elements of their identity. With a view to remedying the main difficulties these persons were faced with, in particular the lack of stopping places and transit sites, further measures, notably legislative ones, should be taken by the authorities. Furthermore, participation mechanisms for Travellers should be strengthened (Conclusion No. 4).

16. To avoid unnecessary repetition, measures taken or planned to act on the Committee of Ministers' conclusions will be presented in Section B below, as part of the article-by-article analysis of implementation of the Framework Convention. Thus:

- The conclusion relating to use of a minority language in relations with administrative authorities at the infracantonal level (Conclusion No. 2) will be discussed under Article 10 (section 2);
- The conclusion relating to the possibility of receiving instruction in a minority language outside the area in which it is traditionally established (Conclusion No. 3) will be discussed under Articles 13 and 14. As for the question of deciding the

language of instruction at municipal level in the canton of Graubünden (also Conclusion No. 3), this will be considered under Article 14.

- The conclusion relating to the situation of Travellers (Conclusion No. 4) will be discussed under Articles 5 and 15.

## **B. Article-by-article presentation of the measures taken in response to the main comments contained in the Advisory Committee's Opinion**

### **ARTICLE 3**

1. *Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.*
2. *Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention individually as well as in community with others.*

*The Advisory Committee found as follows: "It would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis." It considered that "Switzerland should consider this issue in consultation with those concerned".*

#### **1. Personal scope of the Framework Convention**

17. The Framework Convention does not contain a definition of the concept of "national minorities". Its explanatory report states that, when the Framework Convention was drafted, it was decided to leave the Contracting Parties free to interpret and determine its personal scope. Switzerland exercised this freedom when it ratified the Framework Convention on 21 October 1998 by making the following declaration:

*"In Switzerland national minorities in the sense of the Framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language."*

This declaration borrows elements of the concept of "national minorities" set out in Article 1 of the draft additional protocol to the European Convention on Human Rights proposed by the Parliamentary Assembly of the Council of Europe on 1 February 1993. It also refers back to the definition adopted in the proposal for a European Convention for the Protection of Minorities drafted in 1991 by the European Commission for Democracy through Law (Venice Commission).

As a result of the consultation of cantons and other interested parties prior to the ratification procedure for the Framework Convention, as well as a message submitted to parliament on

this subject by the Federal Council<sup>6</sup>, the above-mentioned declaration was meant to restrict the scope of the Framework Convention to traditional national minorities. This was also the Federal Assembly's intention when it adopted the declaration and approved ratification of the Framework Convention.

This traditional approach to the idea of "national minorities" is shared by the majority of Contracting States, which have given utterance to it either in their declarations interpreting the scope of the Framework Convention or in their initial reports on its implementation.

18. In practice, in view of the wording of the interpretative declaration, the Framework Convention is now applied in Switzerland to the national linguistic minorities, namely the French, Italian or Romansh-speaking communities<sup>7</sup>. It similarly protects members of the German-speaking minority who live in the cantons of Fribourg and Valais, and the French speakers in the canton of Berne, in so far as the issues concerned fall within the remit of the cantons<sup>8</sup>. The Framework Convention also covers Travellers and members of the Jewish community<sup>9</sup>.

Inasmuch as Switzerland's definition of the concept of "national minorities" is open-ended and not specifically restricted to certain minorities – as is the case in some other Contracting States – it could cover members of other groups if they satisfied the criteria set out in the declaration. The Swiss interpretation of the idea of "national minorities" is such as to permit a dynamic process in which "new minorities" could eventually obtain protection under the Framework Convention. Examples might be Swiss nationals who are members of other religious communities, such as Muslims, if they meet the other conditions, including long-standing, firm and lasting ties with Switzerland.

19. Officially, any extension of the personal scope of the Framework Convention to members of ethnic, linguistic or religious groups without Swiss nationality and/or without long-standing, firm and lasting ties with Switzerland should in principle be subject to authorisation by parliament, which would have to review its decision to approve ratification of the Framework Convention on the basis of the interpretation set out in the above-mentioned declaration. If the need did arise, such a development would be occurring in a sensitive context and would depend to a large extent on the political climate and on whether it was considered expedient; as the Advisory Committee itself has pointed out<sup>10</sup>, it could be considered only if the overall circumstances were "appropriate".

The inclusion of persons belonging to other groups, including non-citizens, in the application of the Framework Convention on an article-by-article basis, as recommended by the Advisory Committee, has in fact already been partially achieved in Switzerland, if we take into account the protection of fundamental rights afforded by the Federal Constitution, cantonal constitutions and the international treaties to which Switzerland is a party. The "passive" rights which, from this point of view, should be granted to non-citizens as a

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<sup>6</sup> FF **1998** 1033.

<sup>7</sup> See Message of the Federal Council on the Council of Europe's Framework Convention for the Protection of National Minorities, FF **1998** 1033, 1048.

<sup>8</sup> Cf. Supplementary information relating to the Swiss Government's initial report on implementation of the Council of Europe's Framework Convention for the Protection of National Minorities, August 2002, § 7 (p. 4, French only). See also the Advisory Committee's Opinion on Switzerland, 20 February 2003, §§ 21 and 84.

<sup>9</sup> Above-mentioned Message of the Federal Council, FF **1998** 1033, 1048.

<sup>10</sup> Advisory Committee's Opinion on Switzerland, 20 February 2003, § 24.

minimum<sup>11</sup>, are also guaranteed to persons who are not regarded as belonging to national minorities within the meaning of the Swiss declaration. This applies, for instance, to the right to use a minority language in private and in public<sup>12</sup>, the freedom to receive and impart information and ideas in a minority language<sup>13</sup>, and the right to manifest one's religion or belief and to establish religious institutions<sup>14</sup>. In addition, persons and groups of persons not constituting national minorities within the meaning of the Swiss declaration – including, immigrants without Swiss nationality and Swiss persons belonging to the “new minorities” of immigrant origin – are covered by the non-discrimination principle laid down in Article 8 (2) of the Federal Constitution. This provision specifically prohibits all discrimination based on national or geographical origin. In reality, however, this does not prevent unequal treatment from persisting in various fields of civil law (employment, housing, etc.), and this must be eradicated through measures geared to individual situations.

## ARTICLE 4

- 1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited..*
- 2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.*
- 3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.*

*The Advisory Committee found that “the Swiss authorities might envisage the adoption of fuller legislation covering discrimination”. In addition, it considered that “the Swiss authorities should contemplate collecting statistical data on discrimination more systematically, in particular as regards judicial decisions”.*

*It also found “that that there is reason for concern about the indirect discrimination which Travellers continue to suffer, in particular in the fields of land-use planning, the regulation of constructions and the regulation of commerce”. It considered that “the Swiss authorities should adopt additional measures in those specific fields, in particular legislative measures”.*

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<sup>11</sup> In this connection, see Asbjørn Eide, *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities*, UN doc. E/CN.4/Sub.2/1993/34, 10 August 1993, § 42.

<sup>12</sup> Framework Convention, Article 10 (1); Federal Constitution, Article 18.; International Covenant on Civil and Political Rights, Article 27.

<sup>13</sup> Framework Convention, Article 9 (1); Federal Constitution, Articles 16 and 18; ECHR, Article 10; International Covenant on Civil and Political Rights, Article 19.

<sup>14</sup> Framework Convention, Article 8; Federal Constitution, Article 15; ECHR, Article 9; International Covenant on Civil and Political Rights, Articles 18 and 27.

## 1. Fuller legislation covering discrimination

20. The question of comprehensive cross-cutting legislation to combat discrimination has been the subject of internal study. In the light of the fundamental principle of freedom of contract recognised by Swiss law, and given the problems of enforcement – especially regarding proof – that a general anti-discrimination standard in private law would raise, as well as in the interests of the fullest and most flexible possible ban on all forms of discrimination, special legislation was deemed to be the wisest path. Mention may thus be made of the federal Gender Equality Act of 24 March 1995<sup>15</sup>, as well as the federal law on eliminating inequalities affecting disabled persons (LHand), which came into force on 1 January 2004<sup>16</sup>.

21. In addition, there are various provisions of federal laws that are designed to offer protection against discrimination, including for persons belonging to a national minority. Particular examples are Article 261 bis of the Criminal Code (CP)<sup>17</sup>, which makes it an offence to discriminate on grounds of racial, ethnic or religious origin; Article 336 (1a) of the Code of Obligations (CO)<sup>18</sup>, which protects employees against wrongful dismissal for a reason intrinsic to personality, including gender, origin, race, nationality, way of life and religious or philosophical convictions; Articles 19 and 20 of the Code of Obligations, which nullify all contracts contrary to morality, public policy or strictly personal rights. Depending on the circumstances, and especially in more serious cases, discriminatory contractual clauses or instruments may constitute an infringement of personal rights (Civil Code (CC), Article 28 *et seq.*<sup>19</sup>) or even conflict with public policy<sup>20</sup>. Among the laws recently adopted by parliament we may also mention the non-discrimination clause on organ allocation (section 7) in the federal law on the transplant of organs, tissues and cells of 8 October 2004<sup>21</sup>. As for the federal Human Research Bill (LRH), submitted for consultation on 1 February 2006, it states (in section 4) that in the selection of research subjects, certain groups of persons shall not be either used to excess or rejected entirely unless there are objective reasons for this.

It should also be noted that the majority of cantons that have revised their constitutions in the past few years have introduced provisions prohibiting discrimination, modelled on Article 8 (2) of the Federal Constitution. Among recent examples we may cite Article 8 of the Constitution of the Republic and Canton of Neuchâtel of 24 September 2000<sup>22</sup>, Article 11 of the Constitution of the Canton of Schaffhausen of 17 June 2002<sup>23</sup>, Article 10 (2) of the Constitution of the Canton of Vaud of 14 April 2003<sup>24</sup>, and Article 9 of the Constitution of the Canton of Fribourg of 16 May 2004<sup>25</sup>.

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<sup>15</sup> RS 151.1.

<sup>16</sup> RS 151.3.

<sup>17</sup> RS 311.0.

<sup>18</sup> RS 220.

<sup>19</sup> RS 210.

<sup>20</sup> In this context, cf. B. Pulver, thesis on the prohibition of discrimination (L'interdiction de la discrimination), Basle 2003, § 408ff.

<sup>21</sup> FF **2004** 5115.

<sup>22</sup> RS 131.233.

<sup>23</sup> RS 131.223.

<sup>24</sup> RS 131.231.

<sup>25</sup> RS 131.219.

22. The most serious cases of potential discrimination against persons belonging to national minorities within the meaning of the Swiss declaration should in principle be covered by the above-mentioned statutory provisions and the safeguards offered by the fundamental rights enshrined in the Federal Constitution of 18 April 1999 and the cantonal constitutions.

## 2. More systematic collection of statistical data on discrimination

23. The collection of statistical data on discrimination, especially regarding court decisions, is indeed an essential precondition for, on the one hand, gauging the effectiveness of the legal instruments available and, on the other, identifying and defending appropriate measures which should be adopted in order to preclude discriminatory acts. This was why, at the Thirteenth Meeting of the OSCE Economic Forum in May 2005, Switzerland backed a recommendation on the drawing up of a set of principles or guidelines useful for states in the collection of statistical data on the economic exclusion of persons belonging to national minorities.

24. However, it must be pointed out that, because of the power and role-sharing between the Confederation and the cantons that it entails, the Swiss federal system makes the collection of statistics difficult. Mainly on grounds of available resources, official statistics deal with racial discrimination principally from the criminal angle. The Federal Statistical Office thus compiles annual statistics for convictions based on Article 261 bis of the Criminal Code (provision criminalising racism; see § 21 above):

### **Article 261bis: Racial discrimination (entry into force: 1.1.1995)**

Year of conviction

1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
*	1	17	27	25	32	25	38	26	22	23	35

Data bank as at 30/8/2006

© Federal Statistical Office, criminal conviction statistics

25. The Federal Commission against Racism also hosts a data bank of decisions and judgments relating to Article 261 bis of the Criminal Code on its website<sup>26</sup>. This data bank covers federal and cantonal court practice since 1995 (when Article 261 bis came into force). It is designed to be kept constantly up to date. Compiled from data supplied by the Federal Office of Police<sup>27</sup> with the consent of the prosecution authorities, it enables the Federal Commission against Racism to carry out large-scale monitoring. Users are able to conduct searches using various criteria. The data bank includes a statistical overview in the shape of a quantitative survey of the decisions and judgments processed. At the end of 2003 this contained the figures shown below.

<sup>26</sup> <http://www.ekr-cfr.ch/ekr/index.html?lang=fr&PHPSESSID=84103694922fed2ed844190f6f37da95> (in French)

<sup>27</sup> On the subject of statistics compiled by the Federal Office of Police relating to Article 261 bis of the Criminal Code, see Comments of the Government of Switzerland on the Advisory Committee's Opinion, p. 9.

### Cases decided and final judgments (as at 31.12.2003)

The Federal Commission against Racism was notified of 241 cases of complaints to the competent authorities between 1995 and 2003. In just under half the cases the investigating authorities, after a brief examination of the facts, opened no investigation, suspended investigation proceedings, or decided not to consider the case.

Cases decided	95	96	97	98	99	00	01	02	03	Total	%
Dealt with without court proceedings (discharge, decision not to consider the case, etc.)	3	10	7	18	17	20	14	13	16	118	49.0
Final judgments	1	5	14	16	20	20	19	15	13	123	51.0
Total	4	15	21	34	37	40	33	28	29	241	100

In the remaining cases, the complaints were examined under substantive law and judgments were delivered. In 23 cases (almost 20%), the authorities cleared the persons of the charge of racial discrimination, while in 100 cases (some 80%), they found them guilty.

Final judgments	95	96	97	98	99	00	01	02	03	Total	%
Acquittals	0	1	3	4	3	2	3	5	2	23	18.7
Guilty verdicts (convictions/sentences)	1	4	11	12	17	18	16	10	11	100	81.3
Total	1	5	14	16	20	20	19	15	13	123	100

### Offender categories (as at 31.12.2003)

The category of far-right offenders (neo-Nazis and skinheads) accounted for 12%. Almost 10% of offenders worked in the service sector. Otherwise, there were no general trends in any other category.

Overlapping between offender categories cannot be ruled out: for example, if a young right-wing extremist is reported for racial discrimination ("extreme right wing" and "young people").

Offender category	95	96	97	98	99	00	01	02	03	Total	%
Civil service employees	1	3	1	1	0	1	0	2	2	11	4.5
Political players	0	2	0	1	1	1	1	0	2	8	3.2

Media/Publishers	1	2	4	5	4	2	1	0	0	19	7.7
Organisations	0	0	3	0	0	2	2	0	4	11	4.5
Services sector	0	0	2	4	8	3	3	1	2	23	9.3
Individuals	1	8	9	13	13	16	9	9	9	87	35.2
Extreme right wing	0	0	4	5	4	3	7	2	4	29	11.7
Young people	1	0	1	1	1	1	5	1	3	14	5.1
Unknown offenders	0	0	2	1	3	2	0	2	0	10	4.0
No information on offenders	0	4	0	4	4	4	7	4	8	35	14.2
Total	4	19	26	35	39	35	35	21	34	247	100

### **Categories of victim (as at 31.12.2003)**

*It emerges from the general statistics for categories of victim that almost 27% of victims of racial discrimination were of the Jewish faith. This was the group most frequently subjected to discrimination. The large number of offences committed against persons from the Jewish community cannot be attributed solely to the activities of a few particularly vicious revisionists, but also reflects the prevalence of everyday persecution.*

*Other categories often affected are foreigners (20%), dark-skinned people (almost 14%) and asylum-seekers (5%).*

*These figures must, however, be put into perspective in so far as only racially motivated offences resulting in criminal proceedings are recorded. Furthermore, for 25% of the court decisions in question, no information on the victims was supplied.*

Category of victim	95	96	97	98	99	00	01	02	03	Total	%
Jews	0	5	17	14	11	7	5	2	7	68	26.6
Muslims	0	0	0	1	0	1	2	2	2	8	3.1
Members of other religions	1	0	0	0	0	0	1	0	0	2	0.8
Black or dark-skinned people	0	0	2	10	8	8	2	1	4	35	13.7

Travellers/Gypsies	0	1	0	0	1	2	0	0	1	5	2.0
Foreigners/Different ethnic groups	2	8	2	6	11	4	7	7	5	52	20.4
Asylum-seekers	0	0	2	1	5	4	0	0	1	13	5.1
Members of majority population/Whites	0	0	0	1	1	2	0	0	1	5	2.0
Other categories	0	0	0	0	0	1	1	0	1	3	1.2
No information on category of victim	1	4	3	5	9	9	16	9	8	64	25.1
Total	4	18	26	38	46	38	34	21	30	255	100

### **Types of offence (situation as at 31.12.2003)**

The overall survey of types of offence clearly reveals that racially motivated harassment mainly takes the form of verbal (almost 25%) and written (32%) abuse, followed by distribution of racist material (some 10%). Only 2% of offences involved assault, while some 3% took the form of gesturing and approximately 3% entailed refusal of service.

Since 1999 we have also observed racial harassment by electronic means. By 2003 this had already reached 25% of the cases tried during the year. It may be assumed that this percentage will rise over the next few years, given the growing importance of the Internet. In statistics covering a number of years (1995-2003), this type of harassment already accounts for over 7% of all offences.

Account must be taken of the fact that one case may combine a number of types of harassment: for example, if racial discrimination occurs by e-mail, this will be recorded under both "electronic" and "written".

Type of offence	95	96	97	98	99	00	01	02	03	Total	%
Verbal	0	5	4	18	11	14	6	6	7	71	24.9
Written	3	6	13	10	12	12	10	7	14	87	30.5
Electronic	0	0	0	0	2	3	2	6	8	21	7.4
Sound/pictures	0	2	1	0	0	0	4	0	1	8	2.8
Assault	0	1	0	2	0	3	0	1	0	7	2.4

Gesturing	0	0	1	3	1	0	1	1	2	9	3.2
Refusal of service	0	0	0	1	4	1	1	0	1	8	2.8
Distribution of racist material	0	1	7	5	6	5	3	0	2	29	10.2
Other methods	2	0	0	1	1	0	2	2	2	10	3.5
No information on method of offence	0	4	1	2	7	4	6	7	4	35	12.3
Total	5	19	27	42	44	42	35	30	41	285	100

26. It should also be mentioned that the Society for Minorities in Switzerland (GMS) and the Foundation against Racism and Anti-Semitism (GRA) keep a detailed record of cases and incidents with racist or anti-Semitic overtones in Switzerland, even when these do not fall within the scope of Article 261 bis of the Criminal Code. From their report for 2005, published on 20 March 2006, it emerges that, for the first time since 1998, the number of racist attacks and incidents has dropped below 100 (to 95)<sup>28</sup>. At the request of and in co-operation with the Swiss Federation of Jewish Communities (FSCI), two associations – Aktion Kinder des Holocaust (AKdH) for German-speaking Switzerland and Coordination Intercommunautaire Contre l'Antisémitisme et la Diffamation (CICAD) for French-speaking Switzerland – record anti-Semitic acts in Switzerland through the services that they have set up to help, advise and support victims (reporting points and helplines for anti-Semitic incidents). Anti-Semitic acts and incidents are divided into the following categories: 1) serious assault, 2) destruction of or damage to property, 3) threats, 4) offensive behaviour<sup>29</sup>. Details are collected by the FSCI and published in a consolidated report. In 2006, the FSCI recorded 73 incidents reported to its services. This represents more than twice as many incidents as had been recorded in 2005. The FSCI believes that the Confederation should introduce a reporting centre for such cases, not limited to the relevant judicial decisions.

### 3. The situation of Travellers

27. On the question of indirect discrimination against Travellers in the fields of land-use planning and building regulations, see below, *re* Article 5, Section 2, § 29ff., in particular § 32 and § 35 (*Measures relating to land-use planning and building law*).

<sup>28</sup> Cf. <http://www.gra.ch/>. In this connection, see the Comments of the Government of Switzerland on the Advisory Committee's Opinion, pp. 9-10.

<sup>29</sup> See <http://www.cicad.ch/>; [www.akdh.net](http://www.akdh.net).

## ARTICLE 5

1. *The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*
2. *Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.*

*The Advisory Committee considered that the position of Romansh and Italian in the canton of Graubünden warranted special treatment in view of the fact that the continuing existence of those languages in the regions concerned was under threat.*

*It found that “there is reason for concern about the situation of the Travellers insofar as the present institutional and legislative framework enables those persons to preserve and develop their culture and the essential elements of their identity only with difficulty. [...] The main problems facing Travellers today relate essentially to the lack of stopping places and transit sites, administrative obstacles making it difficult to exercise itinerant trades, and children’s schooling. [...] At the legislative level, the Federal authorities should examine in greater detail the possibility of requiring the cantons to adopt adequate planning measures or even to introduce a specific provision in the Federal Act on Land-Use Planning. [...] The cantons concerned should review their legislation on land-use planning and building in order to remedy any shortcoming such as the absence of a provision concerning the possibility of creating transit sites both in the relevant legislation and land-use plans.” This finding is reiterated in the fourth conclusion of the Committee of Ministers on implementation of the Framework Convention by Switzerland.*

*Lastly, it considered that the authorities should, in future years, evaluate with Travellers’ representatives the implementation of the new federal Itinerant Trading Act in order to ensure that it was effective.*

### **1. The position of Romansh and Italian in the canton of Graubünden: federal measures**

28. On measures to safeguard and promote Romansh and Italian under the federal Languages Bill, see below, Part 3: Specific questions to Switzerland, Question 5, § 112.

## 2. The situation of Travellers<sup>30</sup>

### 2.1 Stopping places and transit sites

#### 2.1.1 Present situation, needs, and obstacles to creating new sites

29. In June 2006, the “A Future for Swiss Travellers” foundation (“the Foundation”) published an expert report<sup>31</sup> providing a detailed list of existing stopping places and transit sites in Switzerland and assessing additional requirements in this respect. This survey is an updated version of a report on the same issues published in 2001<sup>32</sup> and relies on data for the period up to summer 2005. It is apparent that, generally speaking, little progress has been made in practice. Since 2001, nine transit sites have been closed, while three new ones have been created. Thus in spring 2004 the canton of *Basle-Rural*, together with the municipality of Liestal, established what is considered to be a high-quality transit site. Also in *Basle-Rural*, the toilet and washing facilities at the Wittinsburg transit site were refurbished in early 2004. In the canton of *Aargau*, a transit site (Augsterstich, in Kaiseraugst) was officially opened in November 2004<sup>33</sup>. It is also considered to be of high quality. These two new transit sites are the result of alterations to local land-use plans, which now include special areas for Travellers. In the canton of *St Gallen*, a stopping place was created in Uznach in 2002. This seven-pitch site was established after adoption of a special land-use plan. It is of high quality, and users are thoroughly satisfied with it<sup>34</sup>. In summer 2005 there was a total of twelve stopping places in Switzerland. These covered the needs of 40% of the Travellers with an itinerant way of life who used such stopping places<sup>35</sup>. At the same date, there were 44 transit

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<sup>30</sup> “Travellers” (“gens du voyage”) is the term that appears in the Message of the Federal Council on the Council of Europe’s Framework Convention for the Protection of National Minorities adopted on 19 November 1997 during the ratification procedure (FF 1998 1033). It was used again in Switzerland’s initial report on implementation of the Framework Convention. It was also the term employed in the Federal Council’s report of 18 October 2006 on the situation of Travellers (see below, § 33ff.). Similarly, the body set up by the Confederation in order to help guarantee and improve the living conditions of this minority, and to preserve its cultural identity, is a foundation called “Assurer l’avenir des gens du voyage suisses” (“A Future for Swiss Travellers”). The term reflects the standard designation at the Council of Europe and the name for which representatives of Swiss Travellers have argued, as also used in the Roma and Travellers Forum. This term has therefore also been adopted for the drafting of this report. It should, nevertheless, be mentioned that some members of the Yenish community feel that the name “Travellers” is ambiguous and too limited, reflecting only one aspect of this minority’s identity.

<sup>31</sup> Thomas Eigenmann/Rolf Eugster/Jon Gaudenz, *Les gens du voyage et l’aménagement du territoire, rapport 05* (“Travellers and Land-use Planning, 2005 Report”), St Gallen, March 2006, available online at: <http://www.err-raumplaner.ch/docs/Standbericht05.pdf> (German), and [http://www.bak.admin.ch/bak/themen/sprachen\\_und\\_kulturelle\\_minderheiten/00507/00512/00566/00569/index.html?lang=fr](http://www.bak.admin.ch/bak/themen/sprachen_und_kulturelle_minderheiten/00507/00512/00566/00569/index.html?lang=fr) (French)

<sup>32</sup> This earlier report found that, to meet the needs at that time, it was necessary to create a) 30 stopping places over and above the eleven then listed and b) 30 transit sites in addition to the 48 existing ones: see in this connection, “Supplementary information relating to the Swiss Government’s initial report on implementation of the Council of Europe’s Framework Convention for the Protection of National Minorities”, August 2002, § 85, p. 28ff. (in French).

<sup>33</sup> It should be noted that since summer 2005 the situation has changed in this canton, where an additional temporary stopping place (Spreitenbach) was established in late November 2006.

<sup>34</sup> We may note another positive development in *St Gallen* since summer 2005 with the canton’s opening of a new stopping place in the municipality of Wil (ten pitches) in summer 2006. Furthermore, after several years’ work, the canton has succeeded in providing a firm basis in land-use planning for the other stopping place in the same municipality (fifteen pitches; privately run).

<sup>35</sup> According to the report, 1,500 persons in total required stopping places, out of a total of 2,500 persons who had retained an itinerant way of life and were among the 25,000-30,000 persons belonging to the community of Travellers with Swiss nationality. It should be noted that this figure of 40% is the same as that already recorded in the previous expert report published in 2001.

sites providing accommodation for approximately 60% of the Travellers with an itinerant lifestyle<sup>36</sup>.

According to the 2005 expert report, it was necessary to provide 29 additional stopping places in order to be able to accommodate the approximately 1,500 itinerant Travellers who had chosen this alternative for the winter season in preference to conventional housing. This would cost some CHF 17.8 million. Particularly in view of the closures since 2000, it would also be necessary to create 38 additional transit sites to provide the 2,500 Swiss citizens continuing an itinerant way of life with temporary accommodation in places that lent themselves to the sale of their goods and services. This would represent an investment of approximately CHF 15.6 million. Furthermore, among the existing transit sites, forty were now substandard and in need of refurbishment. The estimated cost of such work is approximately CHF 2.8 million.

The expert reports commissioned by the Foundation are valuable because they make it possible accurately to determine and monitor the changes in Travellers' living environment, thanks to their in-depth surveys and investigations. Among its conclusions, the updated 2005 report emphasises that it is absolutely essential for the settled population to be made aware, especially at cantonal and municipal levels, of Travellers' living conditions, their needs and the way in which their traditional way of life is being put in jeopardy. It points out that land-use planning must take account of the needs of the population, and that Travellers form part of that population. To this end, greater use should be made of existing planning instruments. Land-use planning procedures take time, and it is only in the medium term that satisfactory solutions will be able to be found. However, in the meantime, the idea of taking account of Travellers' needs should be introduced when cantonal structure plans are being revised. This idea should then be reflected in local land-use plans, so that suitable areas can be determined. As the experience of the past few years has demonstrated, stopping places and transit sites that are not firmly based in land-use plans do not enjoy adequate legal safeguards and are particularly at risk of closure. The authors of the expert report also believe that the Confederation should provide more financial support to help cantons and municipalities to establish, and even run, stopping places and transit sites.

30. The obstacles to the creation of stopping places and transit sites are complex and frequently numerous. They include the following<sup>37</sup>:

- The many prejudices harboured by the general public against Travellers and stoked by incidents involving isolated groups of persons of no fixed address, often of foreign origin and just passing through Switzerland. The latter are immediately confused with Swiss Travellers, greatly to the detriment of the latter. The general public is frequently unaware that our country actually hosts a large community of Travellers with Swiss nationality, namely some 30,000 persons, mainly of Yenish origin, of whom 2,500-3,000<sup>38</sup> (including several hundred Sinti) have chosen a way of life that is in effect itinerant, while the others have become settled over the course of past generations, often as a result of repression by the authorities.
- At the cantonal and municipal levels in particular, the political will to take practical measures on behalf of Travellers is lacking. The cantonal and municipal authorities

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<sup>36</sup> This figure was 65% in the previous expert report.

<sup>37</sup> For further details, see the Federal Council's report "La situation des gens du voyage en Suisse" ("The situation of Travellers in Switzerland" – Part II, Section 2.5), which will be discussed below in section 2.1.4.

<sup>38</sup> These figures are an estimate: see the Federal Council's report of 18 October 2006 on the situation of Travellers in Switzerland (p. 6, Section 1.2) and the sources cited.

often feel under more of an obligation to the settled population, which is better integrated. Moreover, municipal authorities are held back by fear of the additional expenditure to which the creation of sites might give rise, including the spending on education and welfare assistance associated with stopping places. The problem is all the more acute when a municipality's finances are unhealthy. Experience has shown that plans for sites are much more likely to be realised if the canton undertakes to cover all ensuing costs (as in the canton of Graubünden and the canton of St Gallen, as well as the canton of Fribourg for the two sites that it is planning to create and run at its own expense on land belonging to it).

- Especially at municipal and cantonal levels, travellers distrust the institutions that play a decisive part in creating stopping places and transit sites. Partly because of this lack of trust, Travellers are still not sufficiently involved in political and administrative decision-making processes.

### 2.1.2 Travellers' position vis-à-vis the present situation

31. Travellers regard the prejudices that they face as the main obstacles to the creation of stopping places and transit sites. Newspaper headlines about the ravages of some foreign Travellers crossing Switzerland (in particular, transit sites left in an absolute mess) reinforce this unfavourable opinion. These prejudices can only be overcome once a genuine political will emerges in favour of Travellers. This cannot happen without a strong signal from the Confederation and some incentive, or even coercive, measures directed at the cantons and municipalities. In the Travellers' opinion, most cantons and municipalities have not done enough for them over the past ten years.

### 2.1.3 Federal Court case-law

32. On the issue of *stopping* places, the Swiss Federal Court delivered an important judgment on 28 March 2003<sup>39</sup> in which, relying on the case-law of the European Court of Human Rights (judgment of 18 January 2001 in *Chapman v. the United Kingdom*), it recognised that life in a mobile home was an essential part of the identity of Travellers, whose needs were different from those of the settled population. In short, the facts of the case were as follows: a member of the Swiss community of Travellers bought a plot of approximately 7,000 m<sup>2</sup> in an agricultural zone in the canton of Geneva (Céligny). Because of overcrowding at the local stopping place for Travellers (the Molard site in Versoix), he began developing this land as a caravan site for his family (approximately five caravans plus a Gypsy church). Since no applications had been made for the necessary permits, the cantonal authorities ordered him to restore the plot to its previous state. Subsequently, the owner applied for planning permission to operate a tree nursery and use part of the land as a "temporary housing area". Such permission having been refused, he lodged an administrative-law appeal with the Federal Court after having exhausted cantonal remedies. He argued that his personal position (the specific cultural right to live in caravans in sufficient space) warranted exemption from the zone's land-use designation (special permission in an agricultural zone). The Federal Court dismissed this appeal on the grounds that there was no question of exemption, which could only be exceptional, as this was a land-use planning issue. According to the Federal Court, when the federal Land-use Planning Act (LAT)<sup>40</sup> provided that "land reserved for housing or the pursuit of economic activities shall be developed according to the needs of the population" (section 3 (3), first line), this must be

<sup>39</sup> ATF 129 II 321: see appended copy.

<sup>40</sup> RS 700: see appended copy.

construed as meaning that the specific needs of that part of the population consisting of Swiss Travellers must also be satisfied. Thus development plans had to make provision for appropriate sites and areas to serve as places of residence for this group of the population in accordance with its traditions. If a new stopping place of any size was to be created in a region, as in the present case, it was the responsibility of the authorities – if existing sites or land-use zones were unsuitable – to seek an adequate location and institute a procedure potentially leading to the adoption of a special land-use plan<sup>41</sup>. Such planning could also be the result of intercantonal co-ordination under the auspices of the Confederation.

This judgment represents an important development, since for the first time in spatial planning law the specific needs of a minority of the Swiss population have been acknowledged, together with an obligation for the planning authorities to take account of this in their planning. In other respects, the Federal Court recalled that the basic principle was still conformity with statute and building in compliance with land-use zones, so that sites for Travellers must be included in local land-use plans rather than being authorised on an ad hoc basis. The Federal Court has thus denied to Travellers the “positive discrimination” that would allow them exemption from ordinary procedures<sup>42</sup>. We may infer from this judgment that the Land-use Planning Act will normally enable Travellers’ needs regarding permanent and transit sites to be taken into account. The Federal Court requires federal, cantonal and municipal authorities to consider these needs when planning at cantonal and even intercantonal level. Consequently, if a cantonal structure plan provides for a stopping place and/or transit site at a given location, the municipality concerned is obliged to create an appropriate zone in its local land-use plan. A local land-use plan that did not make provision for such a zone ought not to be allowed to be approved.

#### 2.1.4 *The Federal Council’s report on the situation of Travellers in Switzerland*

33. In July 2003, drawing in particular on the Federal Court judgment of 28 March 2003<sup>43</sup>, the National Council’s Committee for Social Security and Health submitted a “postulat” (motion for a government report) on the subject of “the eradication of discrimination against Travellers in Switzerland” (03.3426)<sup>44</sup>. It thereby invited the Federal Council to deliver a comprehensive report on the situation of Travellers in Switzerland and the various forms of discrimination that they faced. It also called for a list of possible national measures to combat this discrimination and improve Travellers’ living conditions. With regard to stopping places and transit sites in particular, the motion specifically raised the question of the statutory measures and financial incentives that the Confederation could or should introduce. The Federal Council declared itself willing to accept this motion. At the same time, it decided that its response should take the form of a detailed report on the situation of Travellers in Switzerland which would incorporate the report previously requested by the Federal Council on the consequences of possible ratification of Convention No. 169 of the International Labour Organization concerning indigenous and tribal peoples.

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<sup>41</sup> On these concepts and their interpretation, see Federal Court judgments 1A.124/2004 / 1P.302/2004 of 31 May 2005: cf. appended copy.

<sup>42</sup> On this subject, see Benoît Bovay, “Les places pour les gens du voyage : plan d’affectation ou autorisation de construire dérogatoire ?” (“Sites for Travellers: land-use plans or special planning permission?”), *Zeitschrift für Baurecht/Revue du droit de la construction*, 3/2003, p. 95ff.

<sup>43</sup> Cf. § 32 above.

<sup>44</sup> Postulat 03.3426 of 7 July 2003: cf. appended copy.

34. Consequently, the Federal Council asked the federal administration (the State Secretariat for Economic Affairs and the Federal Office of Culture) to write a report on “the situation of Travellers in Switzerland” (“the report”).

The preliminary draft of the report was published on the website of the Federal Office of Culture<sup>45</sup> and was the subject of a formal consultation from 22 June to 1 November 2005. Under the rules of the federal Consultation Procedure Act of 18 March 2005<sup>46</sup>, the purpose of this procedure was to involve cantons, political parties and all interested circles. It was mainly a matter of consulting the cantons on the one hand, inasmuch as the issues tackled in the report came very much within their remit, and the Travellers on the other hand, in order to be able to take into account their demands through the various associations and advisory bodies representing their interests. In all, seventy authorities, organisations and institutions were consulted. Under the normal procedure, the draft report, revised subsequent to the formal consultation, was submitted to the various Federal Offices concerned. The report was adopted by the Federal Council on 18 October 2006. The next stage is submission of the report to the relevant parliamentary committees. In order for it to be kept informed of the follow-up to the results of the first cycle, the Advisory Committee on the Framework Convention has been informed of this procedure (see Part One above, Section D, § 13).

35. Part I of the report examines the situation of Travellers in Switzerland in relation to the requirements of Convention No. 169 of the International Labour Organization concerning indigenous and tribal peoples. Over the past few years, various parliamentary questions have in fact been asked concerning ratification of this instrument, especially as regards Travellers. Part I considers the following questions among others: the principle of non-discrimination, consultation and participation, recruitment and conditions of employment, vocational training, social security and health, and education. In the light of the opinions expressed during the consultation procedure, especially by the majority of cantons, the Federal Council has drawn the conclusion that ratification of ILO Convention No. 169 is not justified at present. The Federal Council prefers to ensure compliance, subject to the resources available to the cantons and Confederation, with those obligations that already exist under Swiss law and are likely to improve the situation of Travellers (Federal Council decision of 18 October 2006, section 4)<sup>47</sup>.

As for Part II of the report, it concentrates on the main problem facing Travellers and the authorities, namely the shortage of stopping places and transit sites in Switzerland. Most of the cantons and the majority of organisations consulted thought that the Swiss Confederation should do more in this respect. After reviewing the situation and the needs in this field, the report outlines a range of measures that the Confederation might take to improve Travellers' living conditions. However, the report does not go so far as to lay down a strategy or action plan for the Confederation. The policy options that it sets out have yet to be clarified and are intended as the starting point for an objective discussion. Future debates on this matter in the Federal Parliament will pave the way for the adoption of practical measures and their implementation through a co-operative process involving Travellers, the relevant departments of the federal administration, and the cantonal and municipal authorities. In the Federal Council's opinion, any measures requiring further expenditure should be ruled out, given the current state of federal finances and the resultant budget-cutting programmes. The federal policy options selected the Federal Council may be grouped as described below.

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<sup>45</sup> [http://www.bak.admin.ch/bak/themen/sprachen\\_und\\_kulturelle\\_minderheiten/00507/00750/index.html?lang=fr](http://www.bak.admin.ch/bak/themen/sprachen_und_kulturelle_minderheiten/00507/00750/index.html?lang=fr).  
(In French)

<sup>46</sup> RS 172.061.

<sup>47</sup> It may be noted that the Federal Council has stated, “The fact remains that Convention No. 169 particularly concerns indigenous peoples and therefore must not be considered solely in relation to Travellers in Switzerland.”

*Measures to raise awareness among, and provide objective information to, the settled population and Travellers*

- Through the “A Future for Swiss Travellers” foundation, it would be helpful for cantonal and municipal authorities to have information and advice available about legal options in the land-use planning context. The Foundation is well-placed to provide them with information on positive and negative experience in other cantons, and to advise and support them in the technical and policy spheres.
- Further work on awareness-raising is needed. On the one hand, the settled population must be given more information about Travellers’ culture, way of life and resulting needs, as well as their status as a recognised national minority and the rights that they enjoy. On the other hand, it is essential for Travellers to be better informed/find out more about the administration’s decision-making procedures, in order to assert themselves more fully as “stakeholders”. The “A Future for Swiss Travellers” foundation and the Travellers’ umbrella organisation, the Association of Travellers, would be suitable partners in this respect at federal level.

*Measures to increase Travellers’ ability to take action and participate*

The Association of Travellers should be systematically included in consultation procedures on land-use planning and legislative issues, as well as on specific projects, not only at federal level but also at cantonal and municipal levels.

*Measures relating to land-use planning and building law*

- With regard to land-use planning, the Confederation could help to ensure closer consideration of Travellers’ specific needs through more “incisive” intervention in the cantons’ structure plan process, making greater use of the instruments at its disposal, since cantonal structure plans and any adjustments to them have to be submitted to the Federal Council for approval. They are reviewed in their entirety every ten years (Land-use Planning Act, sections 9 and 10). To be approved, they must take account of those tasks of the Confederation with an impact on spatial organisation as well as federal sectoral plans and schemes in this field (Land-use Planning Act, section 6 *et seq.*). The Confederation’s *Directives* for preparing cantonal structure plans should therefore be amended accordingly. Cantons would expressly undertake to take account of Travellers’ needs in terms of stopping places and transit sites in their structure plans and to allocate specific areas for this purpose, or else to provide due reasons for not doing so.

In this respect, the Federal Council, in its decision of 18 October 2006, expressly instructed the Federal Department of the Environment, Transport, Energy and Communications (DETEC) to give appropriate consideration to the situation of Travellers when approving cantonal structure plans.

- In terms of the law, the current statutory basis of land-use planning is adequate in itself. It is not necessary to set down in the federal Land-use Planning Act an explicit provision obliging cantons and municipalities to take account of the specific needs of Travellers. It is up to the cantons and municipalities to include these needs in their structure plans, local land-use plans and building regulations, if necessary by assigning a zone specifically to Travellers, pursuant to section 18 of the Land-use Planning Act. One solution, already implemented by some cantons, is to provide for the creation of stopping places or transit

sites in *cantonal* land-use plans, rather than leaving this task to municipal land-use planners.

In this connection, the Federal Council, in its decision of 18 October 2006, expressly instructed DETEC, together with the Federal Department of Home Affairs<sup>48</sup>, to draw the cantons' attention – when the occasion arose – to the opportunities offered by the Land-use Planning Act for creating stopping places and transit sites.

#### *The draft Culture Promotion Bill*

The current Culture Promotion Bill (section 14) provides that “[the Confederation] may take measures to enable Travellers to live in accordance with their culture”<sup>49</sup>.

It should be noted here that the Federal Council, in its decision of 18 October 2006, expressly instructed the Department of Home Affairs to take account of Travellers' situation in the Culture Promotion Bill.

#### *Reassignment of military sites belonging to the Confederation*

The extensive restructuring under way in the Swiss army (the “Army XXI” reform plan) will have repercussions on the Confederation's real-estate holdings. The property requirements for defence purposes will decline: of the approximately 26,000 properties owned by the Army, some 10,000 are expected to be sold. A working party comprising representatives of the Federal Department of Defence, Civil Protection and Sport (DDPS) and the “A Future for Swiss Travellers” foundation are studying which sites might be reallocated as stopping places or transit sites for Travellers. Given the structure of the Foundation<sup>50</sup>, this procedure will make it possible to take into consideration the opinions of the Travellers, cantons, municipalities and Federal Offices concerned.

It should be noted here that the Federal Council, in its decision of 18 October 2006, expressly instructed the DDPS to draw the cantons' attention to available land that might be appropriate for stopping places or transit sites and to sell this land if it was suitable.

While the cantons and municipalities have welcomed this proposal from the Federal Council, there are those who believe that the Confederation should give a clear indication of its commitment by making this land available free of charge, rather than selling it.

It must nevertheless be pointed out that, officially, the Confederation's real estate cannot be transferred free of charge. These sites will, however, be sold on the condition that they are used as stopping places or transit sites, and the price decided will take account of the resulting restrictions on use.

#### *Closer intercantonal co-operation*

Creation of stopping places and transit sites is largely the responsibility of cantons and municipalities. If the problems in this field are to be resolved, it is essential for exchange of

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<sup>48</sup> The Federal Office of Culture (FOC) being responsible for this matter.

<sup>49</sup> <http://www.bak.admin.ch/bak/aktuelles/vernehmlassung/index.html?lang=fr> (in French)

<sup>50</sup> A forum bringing together representatives of the Travellers, the municipalities, the cantons and the Confederation: cf. Swiss government's initial report, p. 43, § 144.

information and experience between cantons to be improved and intercantonal co-operation strengthened at all stages of the process, from planning to development to operation of the sites. Structures offering potential for such co-ordination already exist, such as the Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP) and/or the Tripartite Conference on Urban Areas (CTA), which brings together representatives of the Confederation, the cantons and the municipalities.

### 2.1.5 Current measures at federal level

36. For several years, the Federal Department of Defence, Civil Protection and Sport (DDPS) has *authorised Travellers to make spontaneous short-term stops* (lasting approximately a fortnight) *on sites temporarily unused by the army*. However, inasmuch as this land is rarely available during the summer – the period when Travellers specifically need transit sites – this option is limited in scope. That is why a discussion was started within the DDPS as to how certain areas of land no longer used by the army as a result of the current reforms might be redeveloped into sites for Travellers (on this subject, see above, 2.1.4, § 35, p. 28).

37. On 18 September 2006 the Federal Parliament decided to *grant the “A Future for Swiss Travellers” foundation a further general appropriation of CHF 750,000* for the years 2007 to 2011. In July 2006, the National Council’s Committee for Science, Education and Culture (CSEC-N), following the example of the Council of States, dismissed the proposal to double the amount of the proposed appropriation (CHF 1.5 million instead of CHF 750,000). This proposal was nevertheless tabled in the National Council as a minority amendment. The CSEC-N was not unaware of the numerous problems facing Travellers, especially with regard to the inadequate numbers of stopping places and transit sites, so it planned to hold a series of hearings and to discuss possible support measures once it had read the Federal Council’s report on the situation of Travellers.

As already explained, the “A Future for Swiss Travellers” foundation was set up by the Confederation in May 1997 with the aim of helping to guarantee and improve Travellers’ living conditions as well as preserve their cultural identity. The Foundation operates first and foremost as a forum in which representatives of Travellers, municipalities, cantons and the Confederation can seek to resolve the problems besetting Travellers. It was endowed with one million Swiss francs of initial capital and has so far been paid an annual operating subsidy of CHF 150,000 in the form of a general appropriation of CHF 750,000 over five years<sup>51</sup> (on its recent activities relating to stopping places and transit sites, see below, 2.1.6).

38. Since 1986 the Confederation *has granted the Association of Travellers (“Radgenossenschaft der Landstrasse”) an annual flat-rate subsidy* covering approximately 85% of its operating costs. As already stated, the Association is an umbrella organisation for Travellers, acting as an intermediary between them and the authorities. With regard to the creation and management of stopping places and transit sites, it functions as a “transmission belt” (on its recent activities in this field, see below, 2.1.6). It is also very active in raising public awareness of nomadic culture. It is a member of the board of the “A Future for Swiss Travellers” foundation<sup>52</sup>.

<sup>51</sup> Cf. federal law of 7 October 1994 on the foundation “A Future for Swiss Travellers”, RS 449.1. In this context, see the Swiss Government’s initial report, p. 43, § 144.

<sup>52</sup> See the Swiss Government’s initial report, p. 42, § 143.

39. Relying on the expert report on *Travellers and Land-use Planning* published in 2001 by the “A Future for Swiss Travellers” foundation (see above, 2.1.1, § 29), the Federal Office for Spatial Development has since been able to *draw the attention of nine cantons – during adjustment and review of cantonal structure plans – to Travellers’ needs in terms of stopping places and transit sites*<sup>53</sup>. *Amendment of the federal directives relating to the content of cantonal structure plans is also under consideration* (on this subject, see above, 2.1.4, § 35, p. 28)<sup>54</sup>.

#### 2.1.6 Recent activities of the “A Future for Swiss Travellers” foundation and of the Association of Travellers (“Radgenossenschaft der Landstrasse”)

40. Over the past few years, the “A Future for Swiss Travellers” foundation has channelled most of its energy into the problem of the shortage of stopping places and transit sites. Particular mention may be made of the following:

- The second expert report on *Travellers and Land-use Planning, 2005 Report*, commissioned by the Foundation and published in June 2006 (see above, 2.1.1, § 29).
- The Foundation’s intercession with the Federal Office for Spatial Development in December 2003 to request that only those cantonal structure plans making provision for permanent and transit sites for Travellers be approved<sup>55</sup>.
- The Foundation’s participation in federal consultation procedures for adjustment or review of cantonal structure plans, with the object of drawing attention to Travellers’ needs<sup>56</sup>.
- The Foundation’s participation in the federal consultation procedure for partial revision of the federal Land-use Planning Act, and its proposal to widen the scope of section 24 to allow transit sites of up to ten pitches to be established in agricultural zones<sup>57</sup>.
- Organisation of three symposia on this subject.
- Corresponding financial contributions and commitments to assist three cantons (Jura, Zug and Aargau) with the construction of stopping places or transit sites<sup>58</sup>.
- Commitments “in the field”, for example, in the committee set up to save the Buech stopping place in the canton of Berne<sup>59</sup>.

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<sup>53</sup> For example during approval in April 2006 of the 2004 adjustment to the structure plan for the canton of *Schaffhausen*, approval in January 2003 of the structure plan for the canton of *Nidwalden*, and approval in January 2003 of the structure plan for the canton of *St Gallen*.

<sup>54</sup> In this context, see *Les gens du voyage et l’aménagement du territoire, rapport 05* (“Travellers and Land-use Planning, 2005 Report”), St Gallen, March 2006, p. 17 (3.3.2) and p. 33, available online at: <http://www.err-raumplaner.ch/docs/Standbericht05.pdf> (German), and [http://www.bak.admin.ch/bak/themen/sprachen\\_und\\_kulturelle\\_minderheiten/00507/00512/00566/00569/index.html?lang=fr](http://www.bak.admin.ch/bak/themen/sprachen_und_kulturelle_minderheiten/00507/00512/00566/00569/index.html?lang=fr) (French)

<sup>55</sup> Cf. appended copy of the 2003 annual report of the foundation “A Future for Swiss Travellers”, 1.4, pp. 22-23.

<sup>56</sup> Cf. *Les gens du voyage et l’aménagement du territoire, rapport 05* (“Travellers and Land-use Planning, 2005 Report”), 5.2.4, p. 35.

<sup>57</sup> *Ibid.*

<sup>58</sup> For the time being, only the contribution to the canton of Aargau has actually been paid – for construction of the Kaiseraugst site (see above, 2.1.1, § 29).

<sup>59</sup> Cf. the Foundation’s 2003 annual report, 1.5, p. 23.

41. Among the *Foundation's* recent activities, it should be mentioned that on 2 November 2006 the Foundation, together with the *Federal Commission against Racism* (CFR), made an appeal to the public in a press release criticising the Federal Council's report on the situation of Travellers. The Foundation and the CFR believed that, unless the situation of the Travellers was improved over the next five years, the Federal Council's proposals would not be enough. Coercion was therefore required at federal level, in the form of a law making it compulsory to introduce the necessary changes within a set time limit. The Foundation and CFR called for a Federal Council action plan, to be prepared with assistance from the Conference of Cantonal Governments (CdC) and the Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP). On the basis of this action plan, every canton should start work on plans for stopping places and transit sites. Stopping for a few days on public land other than official sites ought to be statutorily possible in every municipality. Furthermore, the Confederation should make it more attractive for cantons and municipalities to create suitable sites, by using a system of financial incentives. Lastly, the Confederation should give the *Association of Travellers* an official mandate on these issues, coupled with an annual appropriation of at least CHF 50,000, in order to provide Travellers with conciliation and advice services and affordable legal representation<sup>60</sup>.

42. *The Association of Travellers* ("*Radgenossenschaft der Landstrasse*") also proposed broadening the scope of section 24 of the Land-use Planning Act during the above-mentioned consultation procedure (see § 40 above). On a number of occasions, it has taken a stand at municipal level and prepared information documents when municipalities have voted on alterations to local land-use plans<sup>61</sup>.

#### 2.1.7 *Current measures and proposed solutions at cantonal level*

43. A number of *projects to create* stopping places and transit sites are *in progress*. Mention may be made of the following in particular:

- *In the canton of Geneva* in May 2003 the Grand Council (cantonal Parliament) passed a law amending land-use zoning in the municipality of Versoix. The general land-use plan for the canton of Geneva was altered to include a new zone for occupation by fairground people and Travellers. The area concerned, in the locality known as "La Bécassière", had hitherto been part of an agricultural zone in the land-use plan. The new site at La Bécassière is to be used to create a 12,500 m<sup>2</sup> stopping place for Travellers (forty individual pitches). There was no application for this law to be submitted to a referendum. However, it was subject to legal challenge and taken all the way to the Federal Court, by owners of land adjoining the new zone. The latter cited, amongst other things, failure during the creation of new development areas to comply with environmental protection requirements under federal law, especially regarding noise levels (excessive disturbance to residents from the noise of trains on the nearby railway). The Federal Court dismissed these appeals on 31 May 2005<sup>62</sup>.

<sup>60</sup> For further details, see the CFR website:  
<http://www.ekr-cfr.ch/ekr/themen/00104/00655/index.html?lang=fr> (in French)

<sup>61</sup> Cf. *Les gens du voyage et l'aménagement du territoire, rapport 05* ("Travellers and Land-use Planning, 2005 Report"), 5.2.5, p. 36.

<sup>62</sup> Judgments 1A.124/2004 / 1P.302/2004 of 31 May 2005.

The State Council has included in its four-year cash-flow plan for major works an expenditure estimate of CHF 9 million for acquisition and development of the land concerned. The next stage will be the Grand Council vote on the corresponding investment appropriation, by early 2007. The new places are expected to come into service in 2008-2009.

Still in Geneva, it should also be noted that the cantonal planning authorities will, until the La Bécassière site is open, countenance the site developed in the agricultural zone of the municipality of Céligny, which was the subject of the Federal Court judgment of 28 March 2003 (see above, 2.1.3, § 32).

- *In the canton of St Gallen* the cantonal authorities, after creating two stopping places (Uznach and Wil) in 2002 and 2006, presented a scheme in May 2006 to create six transit sites with a firm basis in the spatial planning sphere. To this end, a model agreement has been drawn up by the canton in order to settle with the municipalities the problems relating to financing, development and operation of the sites. Thus the canton will, in principle, make available the land and cover the cost of developing it. The municipalities, for their part, will be responsible for running the sites, with a guarantee from the canton in respect of the health and social support expenses that are not covered. In co-operation with the canton, the municipalities must draw up regulations concerning site use, rents, incidental expenses, waste disposal fees, etc. The cantonal building department, to which the government has entrusted implementation of the scheme, is currently seeking suitable plots of land.
- *In the canton of Zug* the cantonal authorities and the municipality of Cham signed an agreement in June 2004 whereby the canton has made available a 6,400 m<sup>2</sup> plot of land for development into a transit site. For its part, the municipality has drawn up a new land-use plan with a special zone to accommodate Travellers (twenty pitches maximum). This new municipal plan was put to a referendum on 21 May 2006 and approved by the voters. The transit site that is thus to be created will replace the one that was closed in the canton.
- *In the canton of Fribourg*, following a parliamentary request in September 2002, the Department of Planning, the Environment and Building instructed the Conference of Cantonal Prefects to come up with practical solutions for accommodating Travellers. On the basis of the resulting in-depth study, the State Council (cantonal government) in November 2005 selected two sites that met the needs of Travellers and the requirements laid down by the canton: one in the municipality of Granges-Paccot (Sarine district) and the other in the municipality of Tour-de-Trême (Gruyère district). Each site was to be able to accommodate 20-30 caravans. Both sites belonged to the State, which was to cover the costs of their development and management. However, on 20 December 2006, the State Council announced that it was “provisionally” suspending the procedure. Although, officially, the two sites originally selected have not been entirely ruled out, the prefect of Sarine has been instructed to find other potential sites in his district by the end of May 2007. This decision by the cantonal government was the outcome of strong opposition in the form of various petitions in the two municipalities concerned. Only one site will now be developed, in a central position within the canton, near a motorway exit.

44. It should also be mentioned that some cantons *are now (or will shortly be) making provision in their land-use planning instruments* for Travellers’ needs. Thus the *canton of Basle-Rural* is intending to include in its structure plan, currently undergoing review, a section (S1.4) on “transit sites and stopping places for Travellers”. The aim is to create two additional transit sites, through co-operation between the canton and the municipalities concerned. The

structure plan of the *canton of Graubünden* (2000), for its part, recognises the need for sites for Travellers; moreover, under the Land-use Planning Act, the canton can include stopping places or transit sites in a cantonal land-use plan if the need arises. In the *canton of Jura*<sup>63</sup> in November 2005, the parliament ratified an amendment to the cantonal structure plan, in which a section was devoted to a site for Travellers. Provision has been made for the creation of a transit site, and possibly a stopping place, in the Delémont valley, and for these sites to be managed in conjunction with the municipalities concerned. The relevant cantonal authorities have been assigned the task of finding a suitable site, drafting development proposals, specifying the method of financing at cantonal level – since financing is the canton’s responsibility – and working with the “A Future for Swiss Travellers” foundation, whilst associating the municipalities with all these actions. Once a suitable site has been found, a special land-use plan is to be prepared. The *canton of St Gallen* has included Travellers’ needs for stopping places and transit sites in its structure plan; the canton is also actively involved in co-ordinating the work of the regions and the municipalities. In *Solothurn*, as part of road-building arrangements for the A1 motorway at Oensingen, a new stopping and transit site has been incorporated in the plans. The new structure plan for the *canton of Zug* – approved in May 2005 by the federal authorities – provides that “the canton and municipalities shall create a transit site in the canton for Travellers”; this goal will be achieved by developing the future site in Cham (see § 43 above). The *canton of Neuchâtel* intends to find a long-term solution for accommodating Travellers through the adoption of a cantonal land-use plan. In the *canton of Ticino*, the government decided on 14 June 2006 to instruct the responsible departments, through the Cantonal Committee on Travellers, to prepare a cantonal land-use plan in order to define a few stopping places. Implementation of this decision is in its early stages. This procedure will see the first involvement of those municipalities where suitable potential sites are situated. Furthermore, in order to ensure that the presence of Traveller families is appropriately managed, the government – together with the Cantonal Committee on Travellers – has instructed outside bodies to provide support for Travellers staying in the canton. Their task is also to raise awareness among the local population and among Travellers passing through, in order to promote better mutual understanding.

45. As regards the *requirement for planning permission* to park caravans even for a short stay, as criticised in the Advisory Committee’s Opinion (§ 37), it must be mentioned that, leaving aside the cantons that have relaxed their legislation or adopted special rules in this respect<sup>64</sup>, a number of cantons are relatively flexible in practice: the *canton of Valais* is one example; in the *canton of Vaud*, planning permission is not necessary for “occasional camping” not involving any special site development (soil stabilisation, drinking-water supply, toilet and washing facilities) and where permission from the landowner is sufficient, together with the municipality’s consent if the stay is of more than four days; in the *canton of Basle-Rural*, planning permission is required outside development zones only for caravans solidly and lastingly fixed to the ground; the *canton of Graubünden* requires permission only for facilities established outside development zones for over three months. In the *cantons of Aargau, Jura and Zürich*, Travellers do not need planning permission to park their caravans temporarily. The *canton of St Gallen* does not require planning permission unless the same site is used regularly as a stopping place. In the *canton of Zug*, planning permission is not necessary for a stay not exceeding a certain period – usually three months.

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<sup>63</sup> Where a transit site has been closed in the last five years.

<sup>64</sup> For example, in the *canton of Berne*, the parking of Travellers’ caravans for up to six months without planning permission is tolerated by the law. In the *canton of Lucerne*, the Building and Development Act, which governs the specific situation of Travellers, provides that, with the consent of the municipality and the landowner concerned, caravans may be parked for over thirty days (usual period) without planning permission.

## **2.2 Itinerant trading**

46. On 1 January 2003 a new federal law on itinerant trade came into force<sup>65</sup>. This law, which covers all itinerant commercial activities, is consistent with the interests and demands of Travellers, whose traditional activities are still closely associated with their nomadic way of life: peddling of small routine items, knife- and scissor-grinding, scrap dealing and recycling. Itinerant trading is still subject to licensing, in the form of a permit valid throughout the country for a five-year period (renewable), issued in return for payment of a standard fee. This new system makes it easier for itinerant traders to do business, inasmuch as they previously had to obtain licences in the individual cantons, with fees and terms which varied considerably and could be a source of discrimination.

47. Generally speaking, the reactions of Travellers to this new legislation have been positive. The cantons have also welcomed the simpler nature of the supervision entailed. Travellers feel less hampered in their activities and appreciate being able to work immediately when they move from one region to another. The only cause of dissatisfaction is the fact that, with the entry into force of the bilateral agreements signed between the Swiss Confederation and the EU/EFTA, foreign Travellers now enjoy more favourable conditions than Swiss Travellers, which, for the latter, calls into question the merits of the new federal law on itinerant trade. Indeed, since 1 June 2004, Travellers from the EU/EFTA have been allowed to supply cross-border services in Switzerland for up to 90 days per calendar year without a residence or work permit. They need only to register with the Swiss authorities responsible for aliens eight days before starting to supply their services<sup>66</sup>. It should, however, be noted that an itinerant trading permit is needed by anyone with any intention of engaging in itinerant trade.

The Swiss Conference of Heads of Cantonal Departments of Justice and Police (CCDJP), which initiated this harmonisation of itinerant trading law at federal level, currently has no plans to review this extremely recent legislation.

## **2.3 Children's schooling**

48. Access to education for children of Travellers with an itinerant or semi-itinerant way of life has raised few problems over the past few years, in part thanks to the flexibility of school authorities and teachers. Travellers' school-age children attend school regularly in the places where their families spend the winter (their places of residence). During this season, they receive a normal education for their age. In summer, when they accompany their parents on the road, they are usually excused from classes by the school authorities. In such cases they are given the necessary educational material for this period and can send their homework and exercises to their teachers for marking. Various kinds of measures are taken with a view to compensating for gaps in knowledge. Despite apparent satisfaction with these arrangements on both sides, the fact remains that half-yearly absences can lead to educational deficiencies, with disadvantages resulting for children seeking apprenticeships because they do not wish to learn a trade within the family.

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<sup>65</sup> RS 943.1.

<sup>66</sup> Cf. Article 9 (1) of the ordinance of 22 May 2002 on the gradual introduction of free movement of persons between the Swiss Confederation on the one hand and the European Community and its Member States, together with Member States of the European Free Trade Association, on the other (RS 142. 203).

49. When consulted on this matter, the Association of Travellers (the Travellers' umbrella organisation) professed satisfaction with the present situation. During the consultation organised by the federal administration in the second half of 2005 on the preliminary draft of the report on the situation of Travellers in Switzerland (see above, 2.1.4, § 34), the Association of Travellers, together with the "A Future for Swiss Travellers" foundation, nevertheless thought that better co-ordination between cantons was needed, particularly in order to develop an appropriate programme of study and teaching methods, as well as to establish a strategy for provision at stopping places and transit sites. As for the Schäft Qwant association, it believes that the Confederation should help the cantons to work out a uniform position on schooling for the Yenish, Sinti and Roma.

## ARTICLE 6

- 1. 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.*
- 2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*

*The Advisory Committee found that Travellers were not yet regarded by the population as being an integral part of Switzerland. It considered that the persistence of stereotypes and other clichés when municipal referenda were held on the establishment of stopping places should be vigorously fought against by the authorities. It also considered that new measures should be designed to make the population aware that the Travellers, through their culture and history, contributed to the cultural wealth of the country.*

*The Advisory Committee found generalised refusals to grant naturalisation to applicants from certain countries had been reported in recent years at the time of ballots held in certain municipalities. It considered that such instances could not but seriously affect the spirit of tolerance, intercultural dialogue and mutual respect and understanding. It also considered that they were problematic from the point of view of the prohibition of discrimination, especially in the absence of a legal remedy.*

### 1. Tolerance of Travellers

50. The lack of understanding shown towards Travellers by the settled population is fostered partly by incidents involving isolated groups of foreigners with a nomadic lifestyle. The persistence of prejudice is often attributable to the fact that part of the settled population is ignorant of the long tradition of the Travellers' presence in Switzerland, their way of life and their customs.

Promotion of tolerance between the settled population and the nomadic population is a priority for the Swiss government. As stated above, measures to raise awareness and provide objective information for Travellers and the settled population, as well as to encourage mutual dialogue, are among the policy options identified by the Federal Council in its report on the situation of Travellers (see above, 2.1.4, § 35, p. 28). In this respect, the "A Future for Swiss Travellers" foundation, one of whose objectives is to constitute a forum for

dialogue, has succeeded in establishing a climate of trust over the past few years. It funds, or has funded, various projects to this end, including an event at the “Expo 02” national exhibition, during which Yenish, Sinti and Roma from our country introduced themselves to a wide audience. It should also be mentioned that in November 2003 a resource centre was opened in Zürich in the offices of the Association of Travellers, the umbrella organisation for Travellers. This centre is intended to provide information on the history, culture and day-to-day life of Travellers by means of a permanent exhibition, photographs and written texts. It has been designed for any interested audience, but particularly for schools and academic circles. It has been part-funded by contributions from the “A Future for Swiss Travellers” foundation and from various cantons, municipalities and institutions.

## 2. Naturalisation procedures

51. For developments in this field, please see the detailed reply to specific question No. 1 to Switzerland (see below, p. 59ff., § 99ff.).

## ARTICLE 9

1. *The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.*
2. *[...]*
3. *The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.*
4. *In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.*

*The Advisory Committee found that there were reports according to which the only Romansh daily newspaper was in a difficult financial situation. The Advisory Committee therefore considered that the authorities should examine, in consultation with the Romansh minority, the various possibilities for securing sufficient funding for this daily newspaper.*

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

## 1. Situation of the Romansh print media

52. Section 2 (2) of the federal law of 6 October 1995 on financial aid for safeguarding and promoting the Romansh and Italian languages and cultures<sup>67</sup> provides that the Confederation may support the Romansh press “for the purposes of protecting and promoting the Romansh language”. The aim of the law is to maintain adequate provision in terms of the Romansh print media, which play an important part in preserving this Rhaeto-Romanic language. The law does in fact permit direct and indirect support for Romansh newspapers. However, since the founding of the Romansh press agency *Agentura da Novitads Rumantscha* (ANR) in 1997, direct subsidy has been replaced by indirect assistance, in the form of editorial services rather than payments. These services are available to all print media and providers of electronic media. The coexistence of direct and indirect support is in principle out of the question, since available financial resources must be committed effectively and targeted. The ten-year existence of the Romansh daily *La Quotidiana* (5,500 copies) and the thrice-weekly publication of the bilingual Engadine newspaper *Post/Posta Ladina* (9,100 copies) show that this form of support for the press has stood the test of time. Because of the flourishing state of business, the publisher of *Post/Posta Ladina* has decided to increase the newspaper’s Romansh- and German-speaking editorial staff in Lower Engadine. As for the weekly *La Pagina da Surmeir* (1,700 subscribers; 61 years of existence), it owes its survival to an agreement signed between the publishers and the ANR press agency.

The Agentura da Novitads Rumantscha receives a total annual subsidy of approximately one million Swiss francs from the Confederation and the canton of Graubünden.

It should also be pointed out that the new Languages Act of the canton of Graubünden (section 12)<sup>68</sup> provides that the canton may subsidise Romansh newspapers and journals by way of compensation if they have made an important contribution to protecting the language, provided that these services could not have covered their own costs

## 2. Needs of the Traveller community in the media field

53. Consulted on this subject during preparation of this report, the Association of Travellers replied that the broadcasting on local radio of a programme in Yenish would be “desirable” but did not demand it. The Schäft Qwant association, for its part, is calling for a media policy to assist the Yenish, Sinti and Roma. A few years ago, the possibility of broadcasting in Yenish on the “LoRa” alternative local radio station in Zürich – following the example set by the Roma language – was raised at a general meeting of the Association of Travellers, but no concrete measures resulted. Nor has the question of possible support measures to increase media provision in Yenish been raised during the current discussions between the Federal Office of Culture and Travellers’ representatives on practical options for preserving and promoting this language.

The Advisory Committee’s finding and the response from the Association of Travellers have been forwarded to the competent authorities in the context of the discussions about action on the results of the first cycle. In agreement with the community of Travellers, the latter’s needs in the media field, if confirmed and asserted, could become a subject of discussion for the “A Future for Swiss Travellers” foundation. It should also be noted here that, under section 3 of the federal Radio and Television Act<sup>69</sup> concerning the remit of radio and television

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<sup>67</sup> RS 441.3

<sup>68</sup> For further information, see below, *re* Article 10, Section 2, § 61.

<sup>69</sup> RS 784.40.

broadcasting companies, the country's cultural and linguistic pluralism must be taken into consideration, as must the promotion of understanding between peoples.

## ARTICLE 10

1. *The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.*
2. *In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.*
3. *[...].*

*The Advisory Committee found that there were reports suggesting that written applications made in Italian to certain federal offices were sometimes replied to in German. It considered that the federal authorities should further raise the awareness of federal administration staff to the need to reply systematically in Italian to requests submitted in that language.*

*In addition, the Advisory Committee found that, in practice, certain difficulties arose in the context of relationships between persons belonging to linguistic minorities and administrative authorities at infracantonal level. The Advisory Committee considered that in such a situation, the authorities concerned should be encouraged to take account of the Framework Convention when they had to rule on the linguistic affiliation of such municipalities and, in particular, to consider whether there was sufficient demand within the meaning of Article 10(2) to authorise the use of the minority language in official relations. This was the second conclusion of the Committee of Ministers concerning implementation of the Framework Convention by Switzerland.*

### 1. Use of Italian in relations with the federal administrative authorities

54. Article 70 (1) of the Federal Constitution states: “*The official languages of the Federation are German, French, and Italian. Romansh is an official language for communicating with persons of Romansh language.*” Also taking into consideration the freedom of language enshrined in Article 18 of the Constitution, it follows directly from this provision that applications to the federal administration may be made in any official language. The federal administration's replies and decisions are in principle<sup>70</sup> drafted and communicated in the official language of the addressee.

To ensure that these principles are respected in practice, the Federal Council has been expanding Italian translation services across the federal administration in the past few years. Following completion of the third and fourth stages of this programme, there are now 95.6 posts (approximately 125 people) in the Italian translation services. In its report on implementation of the European Charter for Regional or Minority Languages – included in Switzerland's third periodical report (p. 62) – the Italian-speaking canton of Ticino considered “the general situation in the Confederation's translation services to be fairly satisfactory and positive”. However, when the present report was being prepared, Ticino stated that, for

<sup>70</sup> With a few exceptions, such as the one allowed by section 16 (2) of the federal Asylum Act (RS 142.31).

consultation procedures, some federal administration offices and services provided texts in French or German only<sup>71</sup>.

55. Use of Italian in relations with the federal administration must also be guaranteed through fair representation of Italian-speaking people in the various departments. With this in mind, the Federal Council in January 2003 adopted “Directives on promotion of multilingualism in the federal administration” (“the Directives”). Their aim is to “promote multilingualism in the workplace and make the most of multicultural attributes”. According to paragraph 21 of these Directives: “Departments shall ensure that the linguistic communities are fairly represented in all areas of activity and at all levels of authority in proportion to their share of the resident population of Swiss nationality. Divergences favouring the Latin languages are possible. The situation in the decentralised services must be appropriately taken into account.” These Directives also provide for certain measures relating to staff recruitment, selection, appraisal and development. They also state that “the federal administration shall use the four national languages (French, German, Italian and Romansh) for information and publicity material, inscriptions, forms, letterheads, Internet publishing, answering machines, etc.”.

While the political will to promote multilingualism in the federal administration therefore exists, measures must be implemented according to departments’ specific needs. In order to help federal offices still lacking a clearly defined strategy, the Federal Office of Personnel (OFPER) is currently preparing a handbook on multilingualism which is intended to offer practical assistance in implementing the Federal Council’s directives. The Ticino members of both Federal Chambers were consulted on this matter in late 2006.

Implementation of the Directives to achieve greater Latin representation in the federal administration has also been assisted by the Federal Council’s acceptance of a number of recent motions in Parliament. Thus the Simoneschi-Cortesi motion of 18 March 2005 (05.3186) called on the Federal Council to eliminate all discrimination against Italian when advertising the Confederation’s vacancies. Similarly, the Berberat motion (05.3152) and Studer motion (05.3174) of 17 March 2005 urged the Federal Council to ensure fair representation of i) linguistic communities in executive positions in the Federal Offices and ii) national linguistic minorities in the various Federal Offices, both at managerial level and among employees as a whole.

Among recent parliamentary interventions on this subject, we may also cite Abate’s question of 5 October 2006 (06.3550), according to which “the absence of senior officials who are Italian-speaking (that is, who have a perfect command of Italian) in many Federal Offices responsible for settling problems affecting both countries certainly does not facilitate work or negotiations in the best interests of Switzerland [in its relations with Italy]”. Similarly, the Ruey motion of 6 December 2005 (05.3750) held that the Directives did not go far enough and urged the Federal Council to “take statutory or regulatory steps to ensure that all senior managers in the federal administration have mastered a second official national language in addition to their mother tongue and have a passive understanding of a third. This requirement must be included in the terms of employment.” The Federal Council moved that the motion be rejected, considering it unnecessary to change the existing basic conditions. It nevertheless added that current efforts ought to be continued with the aim of improving language proficiency among the federal administration’s executives.

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<sup>71</sup> For the record, the draft of this report was submitted to the cantons in French, German and Italian for technical consultation.

## 2. Use of a minority language in relations with the administrative authorities within the canton

56. Freedom of language, as guaranteed by Article 18 of the Federal Constitution, entitles individuals to use the language of their choice, whether this is their mother tongue – including a dialect – or another language. In relations with the State, however, this right is limited by the principles governing use of official languages at federal and cantonal level. The Federal Court has conceded that restrictions based on the principle of language territoriality can be imposed on freedom of language in such cases. These measures must, however, satisfy the usual conditions for restricting fundamental rights, namely a basis in law, an overriding public interest, and respect for the principle of proportionality. The principle of territoriality, enshrined in the Federal Constitution (Article 70, paragraph 2), is designed to preserve the extent and homogeneity of linguistic territories in order to safeguard Switzerland's cultural and linguistic pluralism. That is why Switzerland ratified the Framework Convention with the following declaration:

The provisions of the framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages.

57. In the bilingual canton of *Fribourg*<sup>72</sup>, under the new Constitution<sup>73</sup>, French and German are the official languages of the canton. Their use is governed by the territoriality principle: the State and the municipalities must have regard to the traditional geographical distribution of the languages and take into account indigenous linguistic minorities. The official language of the municipalities is French or German. In municipalities with a significant indigenous linguistic minority, French and German can both be the official languages<sup>74</sup>. The territoriality principle does not override that of freedom of language, which includes the right to communicate in the official language of one's choice with an authority responsible for the whole of the canton<sup>75</sup>.

In practice, four municipalities use two official languages in relations with their residents: Fribourg/Freiburg (the cantonal capital with a German-speaking minority of 21.2% in 2000)<sup>76</sup>, Courtepin (with a German-speaking minority of 18.3% in 2000)<sup>77</sup>, Meyriez/Merlach (officially French-speaking, although in 2000 it had a French-speaking minority of 13.5%) and Murten/Morat (with a French-speaking minority of 12.8% in 2000). In other municipalities with significant local linguistic minorities, only one official language is used with residents<sup>78</sup>. Any specific problems that may arise should be resolved by the planned implementing provisions

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<sup>72</sup> Resident population of canton of Fribourg in 2000: 29.2% German speakers, 63.2% French speakers. Source: 2000 federal census, Federal Statistical Office, Neuchâtel.

<sup>73</sup> See appended copy of relevant extracts.

<sup>74</sup> Article 6, paragraphs 1-3 of the Constitution of the canton of Fribourg of 16 May 2004, in force since 1 January 2005.

<sup>75</sup> Article 17, Constitution of the canton of Fribourg.

<sup>76</sup> It should be noted that in March 2006 the legislative council of the City of Fribourg adopted new rules whereby important documents were in future to be distributed to councillors in both French and German. Previously, all documents had been drafted in French only.

<sup>77</sup> In the merger agreement signed with the municipality of Courtaman and in force since January 2003, it is expressly provided that citizens may communicate with the municipal authorities in either language.

<sup>78</sup> In this connection, see Ambros Lüthi, "La question des langues dans la nouvelle Constitution du canton de Fribourg" ("The languages question in the new constitution of the canton of Fribourg"), *LeGes*, 2004/2, pp. 93-119 (p. 101ff)(in French).

for the new articles of the Constitution. In particular, the term “significant indigenous linguistic minority” must be defined if it is to be applied.

58. In the bilingual canton of *Valais*, Article 12 of the cantonal Constitution states that French and German are declared to be national languages and that both languages are to receive equal treatment in legislation and administration. Furthermore, Rule 6 of the Rules on the Organisation of the Cantonal Authorities of 15 January 1997 reads as follows:

1. The authorities shall ensure that the principles resulting from the equality of both official languages are observed by sending communications and replies in the language of the addressee.
2. Procedures shall also be conducted with due regard for the principle of territoriality using the language in use in the region concerned, at least for the decision. The individual’s right under Article 12, paragraph 1, of the cantonal Constitution remains guaranteed.

59. In the bilingual canton of *Berne*, Article 6 of the cantonal Constitution provides as follows:

1. French and German shall be the national and official languages of the canton of Berne.
2. The official languages shall be:
  - a French in the Bernese Jura,
  - b French and German in the district of Biel,
  - c German in the other districts.
3. The canton and the municipalities may make allowance for special situations arising out of the canton’s bilingual status.
4. A person may communicate in the official language of his or her choice with authorities responsible for the whole of the canton.

As regards the bilingual district of Biel in particular, section 49 of the law of 13 September 2004 on the special status of the Bernese Jura and the French-speaking minority in the bilingual district of Biel<sup>79</sup> provides that “a person may communicate in the official language of his or her choice with the authorities responsible for the bilingual district of Biel”. Under section 51, “the municipalities of Biel and Leubringen shall make allowance for bilingualism when discharging their duties and may take steps to protect and promote it”. According to information supplied by the canton of Berne, inhabitants of the bilingual municipalities of Biel/Bienne and Evilard/Leubringen<sup>80</sup> have no problems using the minority language (French) in their relations with the local authorities and obtaining official documents in that language.

60. In the trilingual canton of *Graubünden*, Article 3 of the new cantonal Constitution states<sup>81</sup>:

1. The national and official languages of the canton shall be German, Romansh and Italian in equal measure.

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<sup>79</sup> The Special Status Act (LStP), which came into force on 1 January 2006. Cf. appended extract.

<sup>80</sup> Resident population of Biel/Bienne in 2000: 55.4% German speakers and 28.2% French speakers. Evilard/Leubringen: 60% German speakers and 34.1% French speakers. Source: 2000 federal census, Federal Statistical Office, Neuchâtel.

<sup>81</sup> Adopted on 18 May 2003 and in force since 1 January 2004. Cf. appended extract.

<sup>2</sup>[...]

<sup>3</sup>The municipalities and districts shall determine their official languages and languages of instruction within the limits of their authority and in co-operation with the canton. They shall have regard to the traditional distribution of languages and take into account indigenous linguistic minorities.

61. The new Languages Act adopted by the parliament on 19 October 2006<sup>82</sup> regulates the use of the canton's official languages, in particular by the cantonal authorities and the courts. It is intended to strengthen the position of Romansh and, to a lesser extent, Italian. The choice of official languages by the municipalities is regulated for the first time in this law (section 16), which states that municipalities shall specify their official languages in their municipal constitutions. The following principle is applied: a municipality is considered monolingual if at least 40% of its population belongs to what is an indigenous linguistic minority in the canton; in such municipalities, the official language is the language of this minority (section 16, paragraph 2)<sup>83</sup>, even if the majority of the population speaks German. A municipality is considered to be multilingual when this proportion is between 20 and 40% (section 16, paragraph 3). It should be noted that the percentage of a linguistic community is calculated on the basis of the results of the most recent federal census (section 16, paragraph 4). Any change from a monolingual to a multilingual municipality or vice versa, and any change from a multilingual to a German-speaking municipality is subject to a referendum in the municipality concerned. A proposal for a change from a monolingual to a multilingual municipality is made if the proportion of the population belonging to the indigenous linguistic minority falls below 40%. Similarly, a proposal is made for a change from a multilingual to a German-speaking municipality if that proportion falls below 20% (section 24, paragraph 1). A change of official language is deemed to have been approved if it has been sanctioned 1) by a majority, in the case of transition from a monolingual to a multilingual municipality, and 2) by two-thirds of voters in the case of transition from a multilingual to a German-speaking municipality (section 24, paragraph 2). In addition, any amendment decision must be approved by the cantonal government (section 24, paragraph 3).

When exercising their powers, monolingual municipalities must use their official language, in particular for municipal assemblies, municipal elections and referenda, municipal notices and publications, as well as in relations with citizens, for street signage and signs on municipal premises (section 17, paragraph 1). Multilingual municipalities must make appropriate use of the official indigenous language (section 17, paragraph 2). Municipalities must work with the relevant cantonal departments to decide on details of their official languages' area of application (section 17, paragraph 3). These principles are to be applied with:

- due regard for municipal independence: the current situation must be taken into account when classifying a municipality as part of a given linguistic region;
- due regard for earlier decisions by municipalities: municipalities' decisions relating to choice of their official language must, as far as possible, be left unaffected.

As for districts, those consisting of monolingual municipalities with the same official language are deemed to be monolingual, and their official language is that of their member municipalities (section 25, paragraph 1). Districts consisting of municipalities with different official languages are deemed to be multilingual, and their official languages are all those of

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<sup>82</sup> Cf. appended copy. Any referendum was to be held by 24 January 2007. It seemed probable that the citizens of Graubünden would have to vote on this law. Signatures for a referendum were being collected by an interest group which believed that the law would penalise the German-speaking majority.

<sup>83</sup> The government wanted to set the threshold at 50%, but the parliament accepted a minority motion in order to improve the prospects of Romansh. Consequently, the number of "monolingual" municipalities should rise from 71 to 78.

their member municipalities (section 25, paragraph 2). Districts must work with the relevant cantonal departments to decide on the details of their official languages' area of application (section 25, paragraph 4).

62. Regarding the Advisory Committee's worry (Opinion, § 57) that some municipalities on the language border might switch from Romansh to German for certain official documents, the Graubünden cantonal authorities are unaware of any changes in official language since the first monitoring cycle.

## ARTICLE 11

- 1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.*
- 2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.*
- 3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.*

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

### **1. Language of private signs in the canton of Graubünden**

63. The case described by the Advisory Committee in its Opinion, which was the subject of a Federal Court judgment in October 1989 (ATF 116 Ia 345), remains an isolated incident and has not been repeated since. In practice, the Graubünden cantonal authorities have found that, in Romansh municipalities, private signs are more often in German than in Romansh.

The new cantonal Languages Act deals with this question. Regarding monolingual municipalities, it specifically states that "the official language must be adequately taken into account in private signs aimed at the public" (section 17, paragraph 1, last sentence). In multilingual municipalities, it is more generally provided that adequate use must also be made of the official indigenous language (section 17, paragraph 2).

## ARTICLE 12

1. *The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.*
2. *In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.*
3. *The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.*

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

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

### **1. Fostering knowledge of the history and concerns of the Jewish community in Switzerland and of phenomena connected with anti-Semitism**

64. In Swiss schools the Holocaust is taught mainly in history lessons, but it is also covered in other classes focusing on the prevention of racism and anti-Semitism and promoting mutual understanding (general/scientific studies and social studies, for example). The following aspects, in particular are covered: experience of other cultures and ways of life; common values and solidarity; understanding of other ways of life, different beliefs and religions; the Second World War, with particular reference to the fate of the Jews; human rights; racism and discrimination, anti-Semitism; intercultural education.

In French-speaking Switzerland, the general curriculum (Pecaro – Plan d'Etudes CAdre ROmand) specifically provides for study of the question of "otherness" (in the context of education for citizenship), for example through an analysis of group phenomena, clans and their dynamics, which play a part in the emergence of anti-Semitism and the development of racial hatred.

Since 2003 the Swiss Federation of Jewish Communities, through its "Likrat" project, has been offering pupils from year 9 upwards an opportunity to invite young people of the Jewish faith into the classroom in order to talk about their Judaism.

65. Teachers have numerous publications and material at their disposal for dealing with the history of the Jewish community in Switzerland and Europe and the prevention of racism and anti-Semitism.

In January 2007, the Swiss Federation of Jewish Communities published a bilingual French/German package for schools entitled *ÜberLebenErzählen: Holocaust-Überlebende in der Schweiz / Survivre et témoigner: Rescapés de la Shoah en Suisse* (“Surviving and bearing witness: Holocaust survivors in Switzerland”). This is a contribution to discussion of the Holocaust in the classroom, focusing on Switzerland and featuring interviews with survivors and historians. In French-speaking Switzerland, CICAD (Coordination Intercommunautaire Contre l'Antisémitisme et la Diffamation) also provides material on Judaism and anti-Semitism for senior classes, as well as a film on Auschwitz.

66. On the Council of Europe's initiative, the Swiss Conference of Cantonal Ministers of Education (CDIP) chose 27 January, with effect from 2004 (Ticino opted for 21 March, with effect from 2005), as the date of the “Day of Remembrance of the Holocaust and for the Prevention of Crimes against Humanity”. The object of the day is to remember the horrors of the Holocaust, consider other genocides that left their mark on the twentieth century and reflect on the ideologies capable of giving rise to these crimes against humanity. The forms of the commemoration are left to the schools, cantons and regional conferences. A web page of useful references (contacts, textbooks, basic documents, and addresses of relevant organisations) has been prepared for teachers and cantons by the CDIP office.

67. The cantons have also made provision for a wide range of initial and in-service training courses for teachers on these issues. We may mention in particular the option of going on an annual journey to the Auschwitz-Birkenau memorial site and meeting survivors. These visits have been organised since 2000 by CICAD and are funded half by the State and half by the schools. Over a thousand teachers have already participated.

68. It should also be noted that since 2004 Switzerland has been a member of the Task Force for International Co-operation on Holocaust Education, Remembrance and Research. The Swiss branch of the Task Force has been set the task of improving and better co-ordinating Holocaust teaching in the cantons, in co-operation with the other twenty or so members of the organisation.

## **2. Promoting the language and culture of Travellers**

69. Switzerland has granted Yenish the status of a “non-territorial language” protected by the European Charter for Regional or Minority Languages and consequently acknowledges the right of the Yenish to measures promoting their language. For the Confederation there is no doubt that Yenish is officially recognised as an integral part of the Swiss cultural heritage.

The Federal Office of Culture (OFC) – responsible for implementing the Charter – has on a number of occasions offered the Yenish community financial support for language projects, including cross-border exchange projects. During preparation of Switzerland's third periodical report on implementation of the Charter, the Association of Travellers (“Radgenossenschaft der Landstrasse”) took the view that “efforts to promote Yenish should be pursued only for the purpose of communication between communities” and that it would “reject all measures aimed at opening up the language to other cultural groups”. The Federal Office responsible is

still open to projects promoting the Yenish language that have the backing of the Yenish themselves. Since the wishes of the grass roots are not always identical with those of the community's representatives, and since quite a few Travellers want Yenish to retain its character as a secret language setting them apart from the settled population, is not easy to determine how Yenish should be promoted, and discussions are still in progress. It should also be pointed out that, because the Yenish have been subjected to decades of systematic forced assimilation by the authorities, the use of and area covered by their language has considerably diminished. Countering this trend, or even reversing it if possible, is a matter for the Yenish themselves, who may count on the Confederation's support for their efforts.

The Schäft Qwant association believes that the Confederation should develop a broader cultural policy for the Yenish, Sinti and Roma, rather than confining itself to the positions expressed by some of their representatives. In Schäft Qwant's opinion, the Confederation should not be focusing its efforts on the issue of shortage of stopping places and transit sites, given the fact that only a minority of Yenish, Sinti and Roma actually retain an itinerant way of life.

70. Also worth mentioning is the National Research Programme called "Social Integration and Social Exclusion" (NRP 51), which ran from 2002 to 2006<sup>84</sup>, covered 37 projects and was funded to the tune of 12 million Swiss francs. Three of these projects dealt with the history of, and discrimination against, Yenish, Sinti and Roma in Switzerland. One focused on persecution and recognition: forms and views of the social exclusion and social integration of Roma, Sinti and Yenish in Switzerland from 1800 to the present; the second looked at the Yenish in Graubünden municipalities during the nineteenth and twentieth centuries; while the third focused on case management, stigmatisation and the institutional processes of exclusion, with reference to the "Children of the Open Road" campaign (1926-1973).

## ARTICLE 13

1. *Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.*
2. *The exercise of this right shall not entail any financial obligation for the Parties.*

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

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<sup>84</sup> See <http://www.nfp51.ch/e.cfm?Slanguage=e>

## 1. Language of instruction in private schools

71. The limitations imposed by some cantons on the language of instruction in private schools spring from a concern to maintain the traditional distribution of languages and thus preserve minority languages. Furthermore, these limitations are designed to promote integration in the cantons. Lastly, it should be pointed out that in practice there are no known instances of permission having been refused for the setting up of a private school using a minority language.

72. In the canton of *Berne*, section 66 (1) of the Compulsory Education Act (“language of instruction”), to which the Advisory Committee makes reference in its Opinion, states: “The choice of the language of instruction in private schools offering schooling within compulsory education shall be governed by the principle of language territoriality enshrined in the Constitution of the canton of Berne. In exceptional cases, instruction may be provided in the other official language.” This restriction is essentially to prevent Germanisation of the French-speaking minority part of the canton through the setting up of private German-language schools. Advantage was taken of the possible exception mentioned at the end of the paragraph to set up a cantonal French-language school in the City of Berne, subsidised to the tune of 65% by the canton of Berne (cf. section 6 (1) of the Compulsory Education Act).

It should also be noted that, as part of compulsory education, the canton of Berne<sup>85</sup> offers speakers of languages other than the official ones the possibility of learning their indigenous languages and cultures (“heimatliche Sprache und Kultur” – HSK classes). Pupils can ask to be exempted from their classes to attend such courses, but this is seldom the case. In general, children attend such courses in their free time. HSK classes are usually organised by consulates, embassies and, more and more frequently, other bodies. In this case, the teachers concerned are in principle unpaid. The municipalities must provide premises free of charge. In the canton of Berne, HSK classes are offered in fifteen languages, including Italian. The largest group consists of Albanians (3,400 pupils), followed by nationals of Balkan states (2,500), Italians (1,800) and Tamils (1,400).

It would also be legally possible for a child to be granted permission to attend an Italian or Romansh-language school outside the canton of Berne at the latter’s expense (cf. Article 4 of the Berne ordinance of 23 May 2001 on school fees).

73. The canton of *Neuchâtel* requires private schools not to give up all instruction in the official language (French) in favour of other languages, in order to promote integration and facilitate social coexistence. Since this is not an absolute requirement, it should not be problematic with regard to Article 13 of the Framework Convention.

74. In the canton of *Ticino*, private schools must provide their instruction in Italian (the canton’s official language). In exceptional circumstances a school may also offer another language of instruction, provided that at least 20% of teaching is in Italian and that the children concerned are only temporarily resident in Ticino (six years at most). This rule is designed to protect Italian, a minority language in Switzerland, and promote integration.

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<sup>85</sup> Like most other cantons, e.g. Basle-Rural, Solothurn, St Gallen, Ticino, Zug and Geneva.

75. To the best of our knowledge, there are no other cantons with legislation that imposes limitations on the language of instruction in private schools. It should be noted that a number of cantons allow private schools where the only language of instruction is English.

## ARTICLE 14

1. *The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.*
2. *In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.*
3. *Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.*

The Committee of Ministers adopted the following conclusion on this subject:

*“In the field of education, the authorities should ensure that the needs of persons belonging to linguistic minorities as regards instruction in a minority language outside its area of traditional establishment are better taken into account, which is particularly important for the Italian and Romansh speakers. In the canton of Graubünden, the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level.”*

The Advisory Committee found that the possibility for persons belonging to a linguistic minority to receive full primary education in their language was limited in practice by the principle of territoriality. It considered that the authorities concerned should be encouraged, when they had to rule on the enrolment of pupils in schools with instruction in the minority language offered by a neighbouring municipality, to take account of the Framework Convention and, in particular, to consider whether there was sufficient demand within the meaning of the aforementioned provision.

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

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

## 1. Language of primary education in multilingual cantons: permission to receive instruction in a minority language

76. In the canton of *Valais*, the law states that a child must attend school in his or her place of residence. Children whose mother tongue is different from that of their place of residence can be granted exemption from this rule. Thus a German-speaking child can attend nursery school (pre-school) and primary school in the towns of Sion and Sierre, which offer instruction in German, a minority language in the canton. Legally and administratively, this therefore raises no problems in principle. Practical difficulties may arise, however, in the form of school transport, for example, or the capacity of the schools concerned, which give priority to pupils resident in Sion/Sierre.

77. In the canton of *Fribourg*, the dispute about switching from one school catchment area to another for linguistic reasons is no longer an issue. The judgment delivered by the Federal Court in 2001 in a case from Fribourg<sup>86</sup> has clarified the balance to be struck between freedom of language and the principle of territoriality. There are consequently no plans to add to existing measures. The territoriality principle is usually applied pragmatically on the linguistic border – as in the case of the Morat catchment area – by allowing children to receive instruction in the official language of their choice. In this connection it is important to note that, as already mentioned, the new constitution of the canton of Fribourg amplifies the principle of language territoriality by providing that the authorities must have regard to the traditional territorial distribution of languages and “take into account indigenous linguistic minorities” (Article 6, paragraph 2). This should mean that linguistic minorities established for decades must have access to an education system in their mother tongue<sup>87</sup>. Some municipalities in the Sarine district (French-speaking majority) have already gone one step further: although over the last hundred years they have only temporarily had large indigenous linguistic minorities (e.g. Villars-sur-Glâne and Marly) or have had none at all (e.g. Matran and Neyruz), they have granted children from the German-speaking minority permission to receive instruction in German at the Freie Öffentliche Schule in Fribourg<sup>88</sup>.

78. The canton of *Berne*, whose practice also gave rise to a Federal Court judgment<sup>89</sup> in 1996, now applies the Federal Court’s recent decisions on the balance between freedom of language and the principle of territoriality.

79. In the canton of *Graubünden*, specific provision is made in the Schools Act of 26 November 2000 for children to be enrolled in schools in neighbouring municipalities offering instruction in a minority language. Under section 16 (2) a child may attend school in a neighbouring municipality on request. The municipalities concerned come to an agreement on the school fees, which are usually paid by the municipality where the child is resident. In the event of disagreement, it is the cantonal department of education that decides. In practice, the option of attending school in a neighbouring municipality offering instruction in a minority language (i.e. Romansh or Italian) is little used. In a few rare cases, on the contrary, requests have been made for enrolment in a neighbouring German-language school in order

<sup>86</sup> Federal Court judgment of 2 November 2001, 2P.112/2001.

<sup>87</sup> In this context, cf. A. Lüthi, *op. cit.*, p. 96.

<sup>88</sup> *Ibid.*, p. 115ff.

<sup>89</sup> ATF 122 I 236.

to “escape” Romansh. Finally, it should be noted that the requirement to teach one of the canton’s official languages as a second language at primary school (Schools Act, section 8) is also conducive to the protection of linguistic minorities in Graubünden.

## **2. Determination of the language of instruction in state primary schools in Graubünden municipalities**

80. Under Article 3 (3) of the new Graubünden constitution, the municipalities decide on the languages of instruction within their areas of responsibility in co-operation with the canton; they must have due regard to the traditional distribution of languages and take account of indigenous linguistic minorities. The new Languages Act in the canton of Graubünden settles this question of language selection by applying clear criteria. This is something new. In principle, the responsibility lies with the municipalities, which must set down in their legislation which language of instruction is to be used during compulsory education (section 18, paragraph 1). Municipalities are classified as monolingual or multilingual by the same criteria used for official languages (section 18, paragraph 2; in this context, see above, *re* Article 10, Section 2, § 61). In the interests of preserving a cantonal language that is under threat, the cantonal government may, at the request of the municipality concerned, authorise exceptions with regard to the choice of language of instruction (section 18, paragraph 3).

81. Under section 19 of the Languages Act, in monolingual municipalities, the first language is taught in the official language of the municipality. Municipalities must ensure that special attention is paid to this first language at all educational levels. The second language must be determined in accordance with the principles laid down in the Schools Act (section 8).

In multilingual municipalities, the first language is taught in the indigenous language (section 20, paragraph 1). In multilingual and German-speaking municipalities, the government may, at the municipality’s request, authorise provision of a bilingual school in the interests of preserving the indigenous language (section 20, paragraph 2). In municipalities in which the proportion of the population belonging to an indigenous linguistic minority is at least 10%, Romansh or Italian must be offered throughout the period of compulsory education (section 20, paragraph 3).

Upon application by a regional association, the government may, as part of a plan, authorise provision of a bilingual primary school (section 21).

In monolingual municipalities whose official language is Romansh or Italian, and in multilingual municipalities, the authorities must offer speakers of other languages the option of learning the indigenous language or improving their proficiency in it (section 22).

82. A change in the language of instruction is subject to the same requirements as a change in the official language (section 24; see § 61).

In this respect it should be noted that, to date, there have been very few changes in the language of instruction in municipalities. The last change dates from over twenty years ago, when the municipality of Bergün/Bravuogn switched to German back in 1983. Some of the other municipalities opting for German had never had primary schools before (Ilanz, Domat/Ems), so that we cannot really count this as a change, and others made the switch very early on (St Moritz in 1910, for example).

83. As regards instruction in Romansh, it may be mentioned that in December 2004 the cantonal government adopted an outline plan for gradual introduction of Rumantsch Grischun, the standardised language created in 1982 that became one of the canton's official languages in 2001<sup>90</sup>. The plan aims to replace the five Romansh dialects (Vallader, Puter, Surmiran, Sutsilvan and Sursilvan) with Rumantsch Grischun as the language of literacy. The Graubünden government claims that this is an effective measure to protect and promote Romansh and should help to strengthen linguistic identity. It also believes that it will concentrate human and financial resources and enable attractive teaching material to be produced.

In March 2003, the Graubünden Grand Council (Parliament) approved an initial motion from the government calling for all teaching material to be printed solely in Rumantsch Grischun from 2005. Lia Rumantscha, the Romansh umbrella organisation, has endorsed the cantonal government's plan, whilst urging the utmost care in preparing this material.

In referenda on 8 June 2005, the six municipalities of Val Müstair became the first region to approve introduction of Rumantsch Grischun. By early December 2006, the following municipalities of Mittelbünden and Surselva had subscribed to this decision after referenda: Lantsch, Brinzauls, Casti, Alvaschein, Mon, Stierva, Salouf, Cunter, Riom-Parsonz, Savognin, Tinizong-Rona, Mulegns, Sur, Marmorera, Trin, Laax and Falera.

In many municipalities, however, the government's plan has met with scepticism or even been openly rejected, especially in the Engadine valley. The government has been criticised for having failed to consider the views of the linguistic community concerned. As to the substance of the plan, these municipalities argue that the "Rumantsch Grischun in Schools" plan will only accelerate the erosion of Romansh and the tendency to use it solely as a spoken language.

Under sections 16 and 18 of the Languages Act, municipalities can choose their official languages and languages of instruction. Municipalities which have opted for instruction in the indigenous dialects are now confronted with the government's decision to issue new teaching material only in Rumantsch Grischun. Mediation is planned for 2008/2009 in order to promote understanding between the parties involved and find a mutually acceptable solution.

### **3. Bilingual instruction**

84. Over the past few years, a number of cantons have developed bilingual courses or pilot projects, mainly at upper secondary level, to make adequate allowance for the languages that pupils use in their families.

85. In the canton of *Geneva*, where almost half the pupils have a mother tongue other than French, a project called "Embracing Languages at School" ("Ecole ouverte aux langues") has been launched. This is meant to build bridges between French (the official language of instruction), German (the second national language taught) and four other frequently used languages, namely Italian, Spanish, Portuguese and Albanian. This approach is based on receptiveness to languages and appreciation of bilingualism. It is directed at all monolingual and bilingual pupils in all classes in the canton.

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<sup>90</sup> See the Swiss government's initial report, § 22, p. 13: Graubünden legislation and election material are published in this language. Rumantsch Grischun is also the language used in correspondence with the cantonal administration.

Moreover, since 2003 the canton of Geneva has offered the possibility of studying for a bilingual school-leaving examination (French and German or French and English).

86. In the canton of *Basle-Rural*, as well, a bilingual school-leaving examination is available.

87. The canton of *Berne* currently offers bilingual French/German classes leading to the school-leaving examination in three cantonal sixth-form colleges in Biel and one in Thun. In addition, there are bilingual classes with German and English instruction in Berne (private school), Thun and Interlaken. With the reorganisation of Bernese sixth-form colleges and introduction of a new curriculum, the two sixth-form colleges in Berne-Kirchenfeld and Köniz-Lerbermatt will offer bilingual instruction in German and French or German and English from the start of the 2007-2008 school year.

88. In the canton of *Fribourg* some sixth-form colleges, as in the city itself, offer bilingual French/German instruction. Some pilot projects are also under way to improve pupils' language proficiency in French and German.

89. In the canton of *Graubünden*, apart from the city of Chur mentioned by the Advisory Committee, the municipalities of Samedan, Pontresina, Bever, Celerina and Trin offer bilingual German/Romansh instruction from the first class of primary school, while the municipalities of Bivio and Maloja offer bilingual instruction in German and Italian.

90. In *Lucerne* a sixth-form college has since 2002/2003 been offering bilingual instruction from the third year, with German as the main language. It may be noted that the Law Faculty of the new University of Lucerne offers introductory courses in legal French. In the 2004/2005 winter term a bilingual French/German master's degree in law was introduced in collaboration with the Law Faculty of the French-speaking University of Neuchâtel.

91. In the canton of *Neuchâtel*, the public education system provides some opportunities for instruction partly in other national languages and in English. In addition, sixth-form colleges offer the option of studying for the federal school-leaving examination in two languages (French and German or French and English).

92. In *Ticino*, public-sector schools offer some bilingual options, usually in Italian and French or Italian and German. Thus the commercial school in the city of Bellinzona provides a bilingual commercial school-leaving examination in Italian and French or Italian and German.

93. In the canton of *Vaud*, two different types of bilingual instruction in French and German, leading to a special diploma, have been introduced for upper secondary students.

94. The canton of *Valais* has led the way in bilingual instruction in public education. Some years back, a number of municipalities, including the capital Sion, had already introduced bilingual education projects (French/German, German/French) from nursery or primary school upwards. In addition, there are bilingual classes at upper secondary level, with a bilingual school-leaving examination or commercial diploma.

## ARTICLE 15

*The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.*

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

*The Advisory Committee found that participation mechanisms for Travellers were still inadequate and that dialogue and co-operation with the Federal authorities had been developed only fairly recently. It considered that the Federal authorities should consider the possibility of reinforcing the competences of the Foundation "A Future for Swiss Travellers" with regard to co-ordination, as well as the composition of its constituent organs. It also considered that the cantons should review their mechanisms for consulting the Travellers, and, where necessary, reinforce them, since communication had proved to be difficult in certain cantons. This finding is reiterated in the fourth conclusion of the Committee of Ministers concerning implementation of the Framework Convention by Switzerland.*

### **1. Participation in social and economic life by persons belonging to linguistic minorities**

95. As a matter of principle, Swiss regional policy aims to reduce regional disparities. The various instruments available at federal level have made it possible, since the 1970s, to support the economically weaker areas. Assistance to mountain regions and rural areas, direct support for businesses and Switzerland's participation in the EU "Interreg" initiative (cross-border, transnational and interregional co-operation) have thus had a positive impact on regions such as Ticino, the Swiss Jura Arc, the alpine regions of Valais and the canton of Graubünden. In view of the nonetheless limited effects of this policy, which was mainly redistributive, in the late 1990s Switzerland embarked on an extensive process of reform with the launch of its *New Regional Policy (NRP)*. To take account of the opinion of the cantons – the main players in regional policy – the NRP was to retain existing instruments that had proved their worth, bringing them all together under one roof as part of a more dynamic approach. Like the policies of other OECD member countries, the NPR is designed to improve the competitiveness of certain regions and, in particular, assist outlying areas to make the most of their potential (mainly by promoting entrepreneurship, innovative capacity, regional systems for adding value, etc.). The emphasis is on measures to generate added value. Indirectly, the purpose is to help maintain and create jobs, promote decentralised settlement and remove regional inequalities. Federal aid of around 70 million Swiss francs a year is planned, in the shape of financial assistance, low-interest loans for infrastructure projects, and tax relief to attract foreign firms to the country. The new Regional Policy Bill

was passed by the Council of States in June 2006. In the autumn 2006 session, it was submitted to the National Council, which also approved it. The Act should come into force in 2008. The message on the multiannual programme for implementing the NRP will be presented to the Federal Chambers in 2007.

96. Complementing the NRP, the *reform of financial equalisation and the division of responsibilities between Confederation and cantons*, approved by referendum in November 2004, will also help to reduce regional disparities. This reform, which should come into effect in early 2008, is particularly designed to allow cantons greater freedom of action in carrying out their tasks. More decisions should in future be taken “on the spot”, which should allow the needs of national minorities to be better taken into account. The other basic aim of the reform is equalisation between the cantons on the basis of their potential resources. The present system of financial equalisation, which is complicated and difficult to operate, will be replaced by resource levelling. Similarly, through an equalisation of burdens, some cantons having to bear special burdens will receive appropriate support from the Confederation. This applies to mountain cantons such as Graubünden, Ticino and Valais.

## **2. Participation mechanisms for Travellers**

97. The Federal Council, in its report on the situation of Travellers in Switzerland adopted on 18 October 2006 (see above, *re* Article 5, 2.1.4), laid down a number of policy options for the Confederation with regard to the creation of stopping places and transit sites: to raise awareness and provide objective information, to promote dialogue between Travellers and the settled population, and to increase Travellers’ ability to take action and participate. It pointed out in particular that the foundation “A Future for Swiss Travellers” needed to intensify the information and awareness work that it was already doing. Thus the Foundation could continue to collect information about the situation in the cantons and municipalities and pass it on even more systematically, in particular with the aim of building up a catalogue of good practice in the legal and planning fields. Co-operation between the authorities and Travellers through the Foundation had proved its worth, so strengthening of it was desirable. These conclusions reflect comments made by the Foundation itself and by the Association of Swiss Municipalities during the consultation on the draft report. These organisations believe that support for the Foundation and the Association of Travellers (“Radgenossenschaft der Landstrasse”) should be increased if they are to do their work effectively.

98. At the cantonal and municipal levels (as at the federal level) there are no special mechanisms for consulting Travellers, for example with regard to planning or education. As for the question of stopping places and transit sites, it is obvious that systematic involvement of the organisations representing Travellers in cantonal and municipal consultation procedures on legislative issues and practical plans would enable their needs to be better taken into account. The Association of Travellers believes, however, that the authorities have been consulting Travellers more on such issues over the past few years. Although in this respect cantons’, and especially municipalities’, practice is still uncertain and unfamiliar, it is nevertheless apparent from the questionnaires used to prepare this report that a number of cantons are making an effort to involve Travellers more in procedures and decisions concerning them. Mention may thus be made of the following cantons:

- The canton of *Aargau*, where Travellers’ representatives were included in the working party to establish the Augsterstich transit site in Kaiseraugst (see above, *re* Article 5, 2.1.1, § 29) and the working party to draw up the terms of use for the site.

- The canton of *Graubünden*, which, through the Association of Travellers, involves Travellers in the management of the sites created for them.
- The canton of *St Gallen*, where Travellers' rights of participation are respected both at the municipal level when special land-use plans are being adopted and at cantonal level for implementation of the structure plan. The canton stresses that these forms of co-operation have proved worthwhile. In particular, Travellers' representatives participated from the outset in work relating to the Linthgebiet stopping place (see above, *re* Article 5, 2.1.1, § 29) and the scheme to create six transit sites (see above, *re* Article 5, 2.1.7, § 43).
- The canton of *Solothurn*, which involved Travellers in the creation of the two existing transit sites, in Balsthal and Grenchen, and also intends to involve them appropriately regarding the future site at Oensingen.
- The canton of *Valais*, which in 1996 set up a "Gypsies" working party including Travellers' representatives.

It should also be noted that some cantons, such as *Fribourg* and *Jura*, involve Travellers' representatives on an ad hoc basis in discussions of their committees or working parties on the creation of stopping places or transit sites. Similarly, in 2005 the canton of *Thurgau* held talks with the Association of Travellers in order to clarify Travellers' needs in terms of land-use planning and creation of sites. In the canton of *Vaud*, Traveller families resident there apparently did not take up their invitations to participate in the Canton of Vaud/Gypsies Working Party because they felt that they were adequately represented through the Association of Travellers.

There are various reasons for the shortcomings that still exist in other cantons. Some cantons, such as *Ticino*, emphasise the difficulty of finding appropriate contact persons in local communities, especially when responsibilities are transferred from one generation to the next. The Travellers' itinerant way of life is also described as making effective local consultation harder.

### III. PART THREE

#### *Specific questions to Switzerland*

##### **Question 1**

*Following the two leading decisions handed down by the Federal Court on 9 July 2003 concerning popular ballots on naturalisation requests, please answer the following specific questions:*

- a) *What main developments have taken place in the Federal Chambers in this field, in particular concerning the parliamentary initiative to leave the cantons free to decide whether to submit naturalisation requests to a ballot?*

##### **Reply**

The following explanations apply to persons wishing to become Swiss citizens and who, in view of Switzerland's interpretative declaration and especially the requirement relating to Swiss nationality, are not protected by the Framework Convention. However, this report provides substantive information relating to all the questions raised by the Advisory Committee about the naturalisation procedure. The persons concerned are in fact entitled to protection of their basic rights in the same way as those belonging to recognised national minorities.

99. The two leading decisions handed down by the Federal Court on 9 July 2003 concerning citizenship (ATF 129 I 217 and ATF 129 I 232<sup>91</sup>) gave rise to numerous parliamentary questions at federal level. In the first decision, the Federal Court for the first time overturned a cantonal decision on naturalisation on the grounds of discrimination. In the second, it judged unconstitutional the practice of submitting naturalisation applications to a ballot of the population (compulsory referendum), because the results of decisions taken by the people are not accompanied by a statement of reasons. These two judgments were based on the principle that a naturalisation decision is administrative by nature, since it concerns an individual's position in relation to the State. Consequently, parties are entitled to all the procedural safeguards enshrined in Article 29 of the Federal Constitution, including the right to be heard and the ensuing right to obtain a reasoned decision. Furthermore, citizens, when deciding whether or not to grant naturalisation, are exercising the administrative responsibilities of the State and are bound to respect basic rights, including the principle of non-discrimination.

100. Following the *parliamentary initiative* (03.454) tabled on 3 October 2003 by State Councillor *Pfisterer*, a *Bill to amend the federal law on acquisition and loss of nationality*<sup>92</sup> was prepared by the Political Institutions Committee of the Council of States in order to bring the tradition of naturalisation by referendum, long established in many municipalities of

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<sup>91</sup> Cf. appended copies.

<sup>92</sup> Nationality Act, RS 141.0.

certain cantons, into line with the requirements of the rule of law. The Bill was accepted by the Council of States in December 2005, after having been approved by the Federal Council, and is currently being examined by the Political Institutions Committee of the National Council. Parliament will probably begin amending the Nationality Act in the course of 2007.

The Bill establishes the principle of cantonal responsibility for laying down the naturalisation procedure and designating the decision-making bodies. The fact must be borne in mind that, depending on the canton and the municipality, naturalisation decisions may be taken by the executive or the legislature, in a municipal assembly or by a municipal ballot. Under the Bill, a vote by the people remains possible in all its forms (general ballot, show of hands, or secret vote in municipal assemblies), but only in cases in which there has been a petition to reject an application for naturalisation, and provided that the body delivering the decision is able to supply an adequate statement of reasons as required by law, so that the applicant for naturalisation can ask the courts to determine whether a refusal is fair and not arbitrary. This means, in practical terms, that naturalisation by ballot is allowed in the form of an optional referendum: in this case, the petition for rejection, with the necessary number of signatures and accompanied by a statement of reasons, will be sent to citizens with their voting material. However, naturalisation applications cannot be put to a compulsory referendum, since this could lead to rejection of an application without the grounds being clearly stated. The Bill also obliges the cantons to protect the privacy of applicants for naturalisation by, on the one hand, disclosing only the information needed to determine whether the applicant meets the naturalisation conditions and, on the other, taking into account the recipients. It requires the cantons to allow appeals to a court with jurisdiction in the last instance over cantonal or municipal decisions on ordinary naturalisation. Under the Federal Court Act (LTF)<sup>93</sup>, after exhaustion of cantonal remedies, an appeal to the Federal Court will be possible in the form of a subsidiary constitutional complaint (FCA, section 113); only complaints of infringement of constitutional rights may be raised in this connection (FCA, section 116)<sup>94</sup>. The Federal Court Act came into force on 1 January 2007. The cantons now have two years to set up cantonal appeal courts of last instance.

101. Such an amendment could serve to counter the *popular initiative of the Swiss People's Party (UDC)* "for democratic naturalisation", which was submitted on 18 November 2005 and accepted on 9 January 2006. This initiative aims to give municipalities full power to determine which authority may grant citizenship. Starting from the premise that naturalisation is a purely political act rather than a specific and individual administrative act, it rules out any possibility of appeal at cantonal level. In its message of 25 October 2006 to the Federal Chambers<sup>95</sup>, the Federal Council moved that the initiative be put to the people and the cantons, with a recommendation that it be rejected.

In October 2005, the National Council decided not to accept the *Joder parliamentary initiative* (03.445n), which would have precluded examination by the courts of the merits of a naturalisation decision.

There were also strong reactions to the above-mentioned Federal Court judgments in the cantons where naturalisation decisions are traditionally regarded as political acts and had hitherto been taken in municipal assemblies or put to a ballot. Thus three cantons submitted cantonal initiatives between November 2003 and November 2004. Noting that its thrust was largely similar to that of the Pfisterer parliamentary initiative, the Council of States decided to allow the *initiative of the canton of Schwyz*, the objectives of which were that naturalisation

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<sup>93</sup> RS 173.110.

<sup>94</sup> Cf. Feuille fédérale (FF) **2005** 3829.

<sup>95</sup> FF **2006** 8481.

should not be obtainable through the courts, that cantonal sovereignty over procedure be guaranteed and that this procedure be conducted fairly and in such a way as to respect applicants' dignity and personal rights. Examination of the *initiatives from the cantons of Lucerne and Aargau*, on the other hand, has been suspended pending discussion of the Bill to amend the Nationality Act.

*b) What general measures - legislative or other - have been taken by the cantons concerned, in particular Lucerne, in order to comply with the above-mentioned judicial decisions?*

### **Reply**

102. Despite a strong attachment to their tradition of people's votes, the German-speaking cantons whose municipalities used to grant naturalisation through the ballot box have taken their cue from the Federal Court's decisions and prohibited this practice. The following developments may be reported regarding citizenship:

- The canton of *Schwyz* no longer allows such ballots. The municipal assembly is now the authority responsible for granting citizenship. The following procedure is used, in accordance with a cantonal government ordinance of 26 August 2003: if a member of the public lays before the municipal assembly a reasoned proposal to reject an application for naturalisation approved by the municipal executive, the municipal assembly must then vote on the matter. Conversely, if there is no proposal to reject it, the application for naturalisation is deemed to have been accepted. Appeals against these new rules brought before the Federal Court in May 2004 were dismissed (ATF 130 I 140). In April 2005, the *Schwyz* electorate approved a popular initiative from the Swiss People's Party (UDC) for secret votes at municipal assemblies. Under a cantonal government Bill of March 2006, the interim provisions applied since 2003 are to be enshrined in law.
- Since 9 July 2003, the canton of *Lucerne* has held no further ballots on naturalisation applications. In February 2004, the Council of State (cantonal executive) laid before the Grand Council (cantonal parliament) a proposed amendment to the cantonal Citizenship Act. This provided that the primary responsibility for naturalisation should lie with special committees while allowing municipalities the option of delegating this authority to a municipal assembly or to the municipal parliament or executive. In addition, the proposal would have altered the naturalisation procedure in municipal assemblies and municipal parliaments (with a result similar to that in *Schwyz*). The Grand Council refused to follow up this proposal.

In July 2003, the canton submitted recommendations to its municipalities on how to comply with the requirement to provide reasons for naturalisation decisions taken in municipal assemblies or parliaments. It further reminded the three municipalities using naturalisation by ballot that this practice had been held to be unconstitutional and that they should not use it in future.

In November 2004, two popular initiatives from the Green Alliance were rejected: the first called for a standard naturalisation process for the whole of the canton, with authority to grant naturalisation being transferred to municipal executives or special committees; the second specifically provided for the right to appeal to the administrative court against a refusal.

As for the municipality of *Emmen*, which was ordered by the Federal Court to stop putting naturalisation to a ballot (ATF 129 I 217), it decided in February 2005 to establish a committee with responsibility for this matter. The members of this committee are elected by the population. Since the Federal Court's decision, another nine municipalities have set up naturalisation committees.

- The canton of *St Gallen* reacted immediately to the Federal Court's decisions of 9 July 2003 by sending a circular to municipalities recommending that they cease naturalisation by ballot.

In May 2004, the cantonal Parliament adopted a new cantonal Nationality Act entailing an amendment of the Municipalities Act, which had allowed naturalisation by ballot. Under the amendment, applications would have been handled by special committees. Put to a people's vote following a referendum of the Swiss People's Party, the Act was rejected in November 2004. A provisional emergency order was subsequently adopted to deal with points of procedure and procedural safeguards. These rules were incorporated in an ordinary law that came into force on 1 January 2007.

- In the canton of *Thurgau*, the legislation is currently being amended to make municipal assemblies automatically responsible for naturalisation. The municipality will nevertheless be able to delegate this authority to the municipal council, a special committee or the municipal parliament. The amendment rules out a ballot of the population and provides that a vote in the municipal assembly cannot take place in the absence of a duly reasoned counter-proposal to that of the municipal council. If the counter-proposal is valid, it is put to a secret ballot.
- In response to the Federal Court's decisions, the canton of *Aargau* advised its municipalities that optional referenda on naturalisation decisions taken by municipal assemblies were not permitted. It also sent them a circular on the requirement to provide reasons for refusals.

Concerning the canton of *Aargau*, mention may also be made of the Federal Court decision of 4 January 2005 whereby a municipal assembly confirming a proposal by the municipal council to refuse naturalisation must at the same time approve the latter's reasons. The reasons for the municipal assembly's decision are thus derived from the municipal council's report<sup>96</sup>.

- Until 2003 the legislation of the canton of *Appenzell-Outer Rhodes* provided for naturalisation by ballot, while allowing municipalities the option of departing from this rule. In October 2003 a provisional ordinance came into force requiring the municipalities to give the executive – or the municipal parliament where appropriate – authority to grant ordinary naturalisation to foreigners. The cantonal Citizenship Act was subsequently amended. Since 20 June 2005 the law (in force since 1 September 2005) has provided that naturalisation is to be granted by the municipal council. This authority can, however, be delegated to a committee.
- In *Glarus*, where – with one exception – the municipalities used to allow the public to vote on naturalisation, the government recommended a moratorium on balloting as long ago as July 2003. In addition, it formally prohibited the holding of the ballot on naturalisation applications planned for October 2003 in the municipality of Schwanden. On 1 May 2005 the *Landsgemeinde* (provincial assembly) approved resumption of the naturalisation

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<sup>96</sup> ATF 131 I 18.

procedures that had been halted. Provided that no use is made of balloting, the municipalities are free to decide on the authority responsible for naturalisation.

- The new Citizenship Act of 31 August 2005 in the canton of *Graubünden* gives general authority to borough assemblies, with the possibility of delegating this to the executive. Some municipalities (such as Chur, Davos and Arosa) anticipated the law several years previously by making their municipal councils the competent authority. Any refusal to grant nationality must be accompanied by reasons and is open to appeal to the cantonal administrative court.
- In the canton of *Obwalden*, the recently amended cantonal Citizenship Act now requires reasons to be provided when naturalisation is refused, and allows appeals against refusals.
- In August 2003, the canton of *Zug* sent the municipalities a circular laying down rules for the naturalisation procedure in borough assemblies. In particular, it prohibited balloting in such assemblies and specified that any refusal must be accompanied by legal reasons and open to challenge in the courts.
- The canton of *Zürich* points out that the Federal Court decision of 9 July 1993 (ATF 129 I 232) on the Zürich popular initiative “Einbürgerungen vors Volk!” (“Naturalisation: Let the people decide!”) confirmed the case-law of the Council of State (cantonal government) according to which a naturalisation decision is administrative in nature and must therefore be accompanied by reasons. The canton has therefore taken the following measures: on the one hand, it has issued recommendations to the municipalities on how to avoid violating the constitution when naturalisation is granted by municipal assemblies. Regarding the requirement to provide reasons, it has suggested a two-stage voting procedure: first a vote on the naturalisation application itself and then, if the application is refused, a vote on the reasons for this refusal; lastly, the reasons must be open to a two-stage appeal process. In July 2004 the cantonal government also amended its ordinance on citizenship in order to lay down the requirement to provide reasons if naturalisation is refused.

On 1 January 2006 the new Zürich constitution came into force, giving municipalities the right to designate the body responsible for naturalisation. Balloting is not permitted. The implementing Act for these new constitutional provisions is being drafted.

- In September 2005, the citizens of the canton of *Berne* approved an amendment to the legislation on naturalisation. At the municipal level, it is now the executive (the municipal councillors) and no longer the municipal assembly which is responsible for granting naturalisation.
- In the canton of *Fribourg*, a Citizenship Bill taking account of Federal Court case-law was tabled in Parliament in November 2006. One of the Bill's main innovations is the responsibility for naturalisation given to the municipal council (executive), while the municipal assembly or general council (legislature) still retains the right to issue a preliminary opinion. In addition, reasons must be provided for any refusal to grant naturalisation, and an unsuccessful applicant may appeal.

**c) Since 9 July 2003 have there been further cases of unreasoned refusals to grant naturalisation by decision of a municipal assembly or as a result of a ballot?**

## Reply

103. Most of the cantons concerned report that the directives which they issued immediately after the Federal Court decisions of July 2003 have been properly obeyed. In particular, there have been no unreasoned refusals to grant naturalisation in the cantons of *Schwyz*, *St Gallen*, *Nidwalden* and *Zug*. It should be noted, however, that some cantons do not always have an accurate overview of the situation, in that they are aware of only those cases that have given rise to appeals. *Lucerne* mentions a few cases of unreasoned refusals by municipal assemblies and a municipal parliament, which were challenged before the Council of State. In a few municipalities in the canton of *Aargau*, inadequate reasons were provided for refusals to grant naturalisation. *Thurgau* also reports seven cases. *Fribourg* expresses regret about some cases in which the requirement for reasons was not fully met; the government then intervened to ensure that these defects were remedied and further such cases avoided. *Zürich* has also reported some unreasoned refusals of naturalisation applications by municipal assemblies. These were generally decisions rejecting the authorities' recommendations of acceptance, and most were set aside on appeal, and the cases sent back to the relevant municipalities for re-examination.

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## Question 2

*Please describe the main results of the Swiss National Science Foundation's research programme on "training and employment" as regards discrimination in the labour market.*

## Reply

104. On 1 April 1998 the Federal Council instructed the Swiss National Science Foundation (SNF) to begin a research programme (NRP) on "training and employment". A budget of eight million Swiss francs was allocated to this programme. The research work began in March 2000 and was completed in 2004. The aim of the programme was to investigate the relationship between education and employment. In particular, it involved a study of the role played in the shaping of this relationship by professional organisations, the new information and communication technologies and the structure of the education system and the world of work. Six major research topics were defined. The question of discrimination was not among them, making it impossible to present, as requested, the results of NRP 43 "as regards discrimination in the labour market". However, one of the three interdisciplinary themes cutting across the main topics was that of minorities, which are particularly affected by employment problems. The question was raised of how far the education system could help to integrate minorities. Minorities were here taken in the broad sense: social, regional, linguistic and cultural.

105. The following are the main projects to have addressed the issue of discrimination from certain angles:

- Study No. 3, "*What's in a name? When being called Pierre, Afrim or Mehmet can make a difference*" (conducted by Rosita Fibbi, Bülent Kaya and Etienne Piguet), revealed very strong discrimination in the employment of second-generation immigrants. In competition with young Swiss from the same school and with the same federal certificate of vocational proficiency (CFC), immigrant applicants were less likely to find a job. Discrimination particularly affected young people whose

origins lay outside the European Union, even when they had successfully completed their schooling in Switzerland. It therefore seemed that the labour-market marginalisation of young people with an immigrant background could not be ascribed solely to problems at school or poor language skills, but was also partly the effect of discrimination at the recruitment stage.

- Study No. 6, “*School ... and then what?*” (conducted by Thomas Meyer), showed that, although the norm was to continue education/training after the end of compulsory schooling, there were considerable differences between genders and according to regional, national and social origin. The “risk profiles” for problems in pursuing post-compulsory education specifically included young people belonging to socio-economically disadvantaged families and/or to immigrant families. It should nevertheless be noted that young people of foreign origin were a heterogeneous group, and the situation varied according to whether they belonged to the category of “long-standing” immigrants (from Italy and Spain in particular) or recent immigrants (from the Balkans, Turkey and Portugal).
- Study No. 7, “*Equality of opportunity in finding an apprenticeship: the influence of school, family background and gender*” (conducted by Urs Haeblerlin, Christian Imdorf and Winfried Kronig), showed that young foreigners and girls in general (especially if foreigners), were at a disadvantage in the transition from compulsory education to vocational training (apprenticeship). In the case of young first-generation immigrants, this was due mainly to the fact that half of them followed the least demanding educational course and seldom had “connections” they could use to find an apprenticeship.

106. An analysis of the findings of the various projects *in terms of post-compulsory education* (i.e. in terms of the transition between the lower secondary and upper secondary stages), carried out by Prof. Fritz Osterwalder, showed that, contrary to what might traditionally be expected of a state education system, admission to the upper secondary level did not depend solely on intellectual capacity. Gender, social origin and migration background still played an unmistakable role.

*In terms of the prerequisites for innovation, the summary* (by Prof. Beat Hotz-Hart) highlighted the fact that, while compulsory education began to pave the way for a career, it often did so badly. Regarding access to training, the situation in Switzerland was stable but not optimal. Ethnic origin, gender, mother tongue and social status played an undue role. The intellectual potential of the population was not being put to best use for the knowledge economy. Successful integration of young non-native speakers in education and employment would be an effective step towards promoting innovation in Switzerland. However, this is still far from being the case.

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### **Question 3**

*Please describe and comment on recent developments - including popular initiatives - having a bearing on ritual slaughter and their potential implications for Jewish and Muslim religious practices.*

### **Reply**

107. On 16 December 2005, parliament adopted a new Animal Welfare Act (LPA). When the draft was put forward for consultation in 2000, the Federal Council wanted to relax the total ban on ritual slaughter of mammals (Animal Welfare Act of 9 March 1978, section 20). It proposed that animals might, in certain circumstances, be slaughtered without being stunned before being bled, in order that, taking conflicting interests into account, allowance might be made for the freedom of conscience and religion of Jewish and Muslim communities, for which ritual slaughter was an important practice. Given the strong opposition from most cantons, as well as from animal-welfare, farmers', veterinary and consumer organisations, and in the interests of religious harmony, the Federal Council had to drop this amendment. It should be noted that ritual slaughter has been banned in Switzerland since 1893, when the people adopted an article of the Constitution to this effect, having refused to accept a proposal from the Federal Council and parliament<sup>97</sup>. The right to import meat from animals slaughtered according to Jewish ritual (kosher meat) or Muslim ritual (halal meat), on the other hand, is specifically enshrined in the new Animal Welfare Act (section 14). This Act should come into force in late 2007, once the corresponding ordinance has been amended.

108. In January 2006, the federal popular initiative of 23 July 2003 "For a modern approach to animal welfare" (or "Yes to animal welfare!") was withdrawn. The initiative called for the enshrinement in the Federal Constitution of a prohibition of the slaughter of animals which are not stunned before being bled, together with a ban on the import of animals and animal products if the conditions in which the animals had been held or the products had been manufactured abroad contravened the principles of Swiss animal welfare legislation. The latter ban was problematic, since it would have meant that members of the Jewish and Muslim communities would no longer have been able to buy meat in Switzerland from animals slaughtered according to their ritual practices. In its message of 7 June 2004, the Federal Council moved that the Federal Chambers reject the initiative. This recommendation was followed by the Council of State in October 2004 and the National Council in June 2005.

54. In 2002 the Association against Factory Farming (ACUSA) began collecting signatures for a popular initiative entitled "Against ritual slaughter without prior stunning" which called for amendment of the Federal Constitution to prohibit ritual slaughter of poultry as well and to prohibit the import, marketing and consumption of kosher and halal meat in Switzerland. This initiative was unsuccessful.

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#### **Question 4**

*Please explain, in the light of the most recent case-law (in particular the Federal Tribunal's decision ATF 129 II 321), what trends can be noted concerning the interrelationship between regional planning and building law principles, on the one hand, and needs linked to Travellers' traditional way of life, on the other hand.*

#### **Reply**

109. Please refer, in this context, to the information provided above in Part Two of this report, Section B, *re* Article 5, 2.1.3, § 32ff.

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<sup>97</sup> This article was superseded in 1973 by a general provision on animal welfare (Article 80 of the present Federal Constitution), which forms the basis of the current Animal Welfare Act of 9 March 1978, section 20 of which prohibits ritual slaughter.

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### **Question 5**

*Please describe and comment on recent developments in the ongoing work concerning the preparation of a draft Federal Bill on National Languages and Understanding between Linguistic Communities.*

### **Reply**

111. On 28 April 2004, the Federal Council decided not to lay the draft *federal Languages Bill* and corresponding message before the Federal Chambers, explaining that it objected to making new legislation that entailed the granting of subsidies<sup>98</sup> when it had been instructed by Parliament to reduce federal expenditure. However, the Federal Council confirmed its intention of maintaining the Confederation's aid to linguistic minorities, especially for the promotion of Romansh and Italian in the cantons of Graubünden and Ticino. The National Council thereupon tabled two motions urging the Federal Council to lay the Bill before parliament despite the shortage of resources. These were followed on 7 May 2004 by a parliamentary initiative (Levrat 04.429 "Federal National Languages Act"). The Legislative Committees for Science, Education and Culture (CSEC) of both Councils approved this initiative. The National Council Committee (CSEC-N) began discussing the Languages Bill on 24 June 2005, before the Federal Council had expressed a further opinion. On 8 September 2005, at a second meeting, CSEC-N voted to pursue the matter and began an article-by-article examination of the Bill as drafted by the Federal Council. CSEC-N completed its scrutiny of the Languages Bill in early July 2006. At its meeting of 15 September 2006, it adopted the relevant explanatory report for parliament and the Federal Council. The Bill is due to be debated by a plenary session of the National Council in spring 2007.

112. The federal Languages Bill gives substance to the new languages article in the Federal Constitution (Article 70). It regulates use of the Confederation's official languages by the federal authorities and in relations between the latter and the public, promotes exchange and mutual understanding, and supports multilingual cantons in the performance of their special duties. It is also intended to strengthen quadrilingualism as a feature of Switzerland, encourage individual and institutional multilingualism in national languages and preserve Romansh and Italian as national languages. One special feature of the Bill – not included in the Federal Council's draft – concerns foreign-language teaching. A majority of the Committee wanted the first foreign language taught to be a national language. It may also be noted that the Bill regulates use of Romansh as an official language of the Confederation in certain contexts (Federal Constitution, Article 70.1): in their relations with the federal authorities, Romansh speakers may use one of their five dialects or the standardised language (Rumantsch Grischun). This makes allowance for the fact that, in general, Romansh speakers do not use Rumantsch Grischun themselves, but understand it. However, in correspondence with Romansh speakers, the Confederation, like the canton of Graubünden, will use Rumantsch Grischun. To assist Romansh, the Bill also specifies that members of the Federal Chambers may speak in the national language of their choice.

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<sup>98</sup> The Languages Bill would have cost an estimated CHF 17 million to implement from 2008.

113. On the subject of federal language policy, it should also be mentioned that in January 2003 the Federal Council commissioned the Swiss National Science Foundation (SNF) to conduct a *National Research Programme* (NRP) on “*Language diversity and linguistic competence in Switzerland*”, with a budget of 8 million Swiss francs: [http://www.nfp56.ch/f\\_portraet\\_dasnf56.cfm](http://www.nfp56.ch/f_portraet_dasnf56.cfm) (in French).

Swiss language policy is intended on the one hand to strengthen understanding between the different linguistic groups, and, on the other, to contribute to the building of individuals’ language-related identity and develop their proficiency in their first language and in others. The intention is that NRP 56 will lay the scientific foundations for this policy, which encompasses five key elements:

- Clarification of the legal and policy requirements for action on language policy;
- Current challenges in terms of language teaching in schools;
- Adult language skills;
- Use of languages in the economy;
- Relationship between language and the shaping of individual identity.

Research began in September 2005. Summaries and completion of the programme are planned for mid-2009.

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### **Question 6**

*Please describe the principal changes - and their first practical applications, if any - introduced by the new constitution of Graubünden with regard to use of official languages, the principle of territoriality and municipal autonomy in such matters.*

### **Reply**

114. Regarding the *use of official languages*, the relevant changes introduced by the new constitution of Graubünden and the new Languages Act, and in respect of *municipal autonomy* in such matters, please refer to the information provided on this subject in Part Two of this report, Section B, *re* Article 10, Section 2, § 60ff. As far as the question of *languages of instruction and municipal autonomy* is concerned, please refer to our comments *re* Article 14 above, Section 2, § 80ff.

115. *The principle of territoriality* enshrined in the cantonal constitution must be applied pragmatically, in accordance with the municipalities’ status and having regard to their current language situation.

116. According to the directives issued by the government in November 2003 to municipalities and districts, until the relevant implementing Act has come into force, the principle laid down in the cantonal constitution regarding co-operation with the canton to determine official languages and languages of instruction must be implemented on a case-by-case basis. Consequently, it is not really possible to report on practical applications of

changes in these fields before the Languages Act comes into effect, at a later stage of the second monitoring cycle of the Framework Convention.

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### **Question 7**

*Please describe the main innovations introduced by the new constitution of Fribourg with regard to the interrelationship between the principle of territoriality and linguistic freedom.*

### **Reply**

117. With regard to languages, the *former* constitution of the canton of Fribourg provided as follows:

#### **Article 21 (former constitution)**

*1. French and German shall be the official languages. Their use shall be governed by the principle of territoriality.*

*2. The State shall encourage understanding between the two linguistic communities.*

The *new* constitution now provides as follows with regard to languages (Articles 6 and 17):

#### **Article 6 (new constitution)**

*1. French and German shall be the official languages of the canton.*

*2. Their use shall be governed by the principle of territoriality: the State and the municipalities shall have regard to the traditional distribution of languages and take into account indigenous linguistic minorities.*

*3. The official language of the municipalities shall be French or German. In municipalities with a significant indigenous linguistic minority, both French and German can be the official languages.*

*4. The State shall promote understanding, harmony and exchange between linguistic communities in the canton. It shall encourage bilingualism.*

*5. The canton shall promote contact between national linguistic communities.*

#### **Article 17 (new constitution)**

*1. Freedom of language shall be guaranteed.*

*2. A person communicating with an authority responsible for the whole of the canton may do so in the official language of his or her choice.*

118. These new provisions create a better balance between freedom of language and the principle of territoriality. This is particularly apparent in paragraphs 2 and 3 of Article 6. Indigenous linguistic minorities are systematically taken into account in the context of the principle of language territoriality, which was not the case in the former Fribourg constitution.

This toning-down of the constitutional principle of language territoriality is/should be conducive to linguistic harmony. It was a matter of finding a compromise, which was based

on two axioms: the linguistic majority needed guarantees that its cultural and territorial integrity would be maintained. However, preservation of the linguistic landscape shaped over the course of history also meant protecting the rights of the linguistic minority. This in turn meant that municipalities with large linguistic minorities must inevitably grant the latter certain rights. Furthermore, municipalities with smaller but nevertheless significant linguistic minorities should be allowed the option of taking measures to assist the latter<sup>99</sup>.

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## **Question 8**

*Please describe and comment on the efforts made by the cantons, under the auspices of the Conference of Cantonal Ministers of Education (CDIP), to harmonise language teaching conditions and explain what implications they will have for teaching of the national languages and for national cohesion.*

## **Reply**

119. In March 2004, the *cantonal* ministers of education decided, with 24 votes in favour and 2 abstentions (Appenzell-Inner Rhodes and Lucerne), to pursue co-ordinated development of language teaching in compulsory education and to foster language proficiency at an earlier age. Their common goals were to promote the first language (local national language) to a greater extent and, in the longer term, to teach all pupils two foreign languages from the third and fifth school years onwards at the latest. The foreign languages on offer will have to include a second national language and English. Implementation is to begin by 2010, or 2012 at the latest, depending on the situation in the individual cantons.

With this strategy, the CDIP has thus come out clearly in favour of retaining a second national language for all pupils in primary education from the fifth year at the latest. For the CDIP, a second national language in a multilingual country must unquestionably be taught early for political reasons. The CDIP also supports the goal of allowing pupils to develop proficiency in other national languages.

Under the common timetable, harmonisation of the initial position should have been completed by 2006/2007<sup>100</sup>. Subsequently, teaching of a first foreign language in the third school year should be introduced in all cantons by 2010 at the latest, and teaching of a second foreign language in the fifth school year by 2012. In fact, the first steps have already been taken, with English taught from the third year in central Switzerland (from the 2005/2006 school year) and from the second year in the canton of Zürich (a gradual process from 2004/2005 onwards).

For the CDIP, the order in which the two foreign languages are introduced is immaterial, the important thing being to meet the targets set for the end of compulsory education (see “HarmoS” project, below). This issue is to be co-ordinated in the four regional conferences of the CDIP (French-speaking Switzerland and Ticino, North-West Switzerland, Central Switzerland and Eastern Switzerland). From the decisions and declarations of intent so far adopted, the following picture emerges:

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<sup>99</sup> In this context, see A. Lüthi, *op. cit.*, pp. 94-95. A. Macheret, “Le droit des langues” (“Language law”), *Revue fribourgeoise de jurisprudence* (RFJ), 2005 special issue on the Constitution of 16 May 2004, pp. 113-115, available online: <http://www.fr.ch/ofl/rfj/cst/> (in French).

<sup>100</sup> Ticino and Graubünden may make different arrangements, on account of their special language situation.

- In part of German-speaking Switzerland, English will be the first foreign language taught (from the second or third year of primary school), followed by French (or Italian, as in Uri) from the fifth year of primary school (Zürich, Central Switzerland CDIP and Eastern Switzerland CDIP apart from Appenzell-Inner Rhodes).
- In French-speaking Switzerland, German is already taught from the third year of primary school and will remain the first foreign language, followed by English, which will now be introduced in the fifth year (declaration of the CDIP of French-speaking Switzerland on 30 January 2003).
- In some cantons/regions near a linguistic border (the German-speaking parts of the cantons of Valais, Fribourg and Berne; the cantons of Solothurn and Basle-City), it has already been decided that French will remain the first foreign language, taught from the third year of primary school, followed by English, which in future will be introduced from the fifth year of primary school (North-West Switzerland CDIP minus Zürich, Lucerne and Aargau; cf. co-operation agreement of 21 April 2006). In September 2006, the government of the canton of Basle-Rural pronounced itself in favour of English as the first foreign language; the legislature has yet to rule on this matter.
- In the cantons of Ticino and Graubünden, the first foreign language taught remains a national language.

In Graubünden, following a reform of language teaching in the canton, Italian has now replaced French as the first foreign language for German speakers. This measure was designed to strengthen the position of the canton's languages. In very mixed municipalities on the linguistic border, Italian sometimes competes to some extent with Romansh. A new development at secondary level is that English is now taught as a non-cantonal foreign language. In the Graubünden Grand Council, a parliamentary group has nevertheless tabled a motion calling for the introduction of English as the first foreign language instead of Italian. The canton's education department is currently working on relevant models.

The Ticino model provides for compulsory teaching of French from the third school year, with German being taught from the seventh and English from the eighth year. Thus, upon completion of their compulsory education, Ticino pupils will have been taught another two national languages and English.

The changes that the CDIP is planning with regard to language teaching will become compulsory through its "HarmoS" project for gradual harmonisation of compulsory education throughout Switzerland. This project was put forward for consultation in February 2006 and should come into force from 2009. It aims, amongst other things, to establish uniform and measurable educational standards across the country in certain school years and certain subjects, including the first and second foreign languages. The educational standards to be attained by pupils in language subjects are to be determined for the whole of Switzerland from 2007.

120. The CDIP's strategy for nationwide co-ordination of language teaching in compulsory education has aroused strong resistance in several cantons of German-speaking Switzerland. It has been criticised for overloading primary school children, who already have to learn German – a foreign language for them – after Swiss German. The object ought to be to teach a single foreign language at primary school. The generally preferred language would be English, with French left until secondary school. A first popular initiative to this end was

launched by teachers in Zürich, a canton which has led the way in introducing early learning of English at primary school, before French. A debate was also started in ten other German-speaking cantons on the basis of popular initiatives, parliamentary initiatives, parliamentary questions, etc. An intercantonal committee has been set up to co-ordinate opposition to the CDIP scheme. To date, final decisions in favour of English as the only foreign language at primary level have been adopted by the parliaments of the cantons of Appenzell-Inner Rhodes and Nidwalden. The cantons of Schaffhausen, Thurgau, Zug and Zürich, on the other hand, rejected popular initiatives along these lines in February, May and November 2006. The vote by Zürich – the canton with the largest population, and an economic powerhouse – sends an important signal which may well set the tone. It is probable that those cantons which have not yet come to a decision will follow this example, and even that other cantons will reconsider their decisions for mainly practical reasons (textbooks issued for several cantons together, teacher training institutes shared by more than one canton, etc.).

121. It should be pointed out that the question of foreign-language teaching has also prompted lively political discussion *at federal level*. A parliamentary initiative of June 2000 (Berberat No. 00.425, "Teaching of the Confederation's official languages") called for Article 70 of the Federal Constitution (on languages) to be supplemented by a provision requiring cantons to ensure that the second language taught after the official language of the canton or region concerned was one of the Confederation's official languages. This initiative was intended to make it possible for Swiss citizens to understand and get to know each other better, in order to strengthen national cohesion. It was discussed during the parliamentary debate on the federal Languages Bill (see above, *re* Question 5, § 111ff.). As already explained, the Legislative Committee that passed this Bill agreed by a narrow majority (12 votes to 10 with one abstention) that the first foreign language taught should be a national language. The federal Languages Bill is to be debated in a plenary session of the National Council in spring 2007.

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### **Question 9**

*Please describe the main changes introduced by the recent revision of the law on the Grand Council of Berne and its rules of procedure and explain how they will affect the position of the French-speaking delegation to the Berne Parliament.*

### **Reply**

122. At the latest elections, in April 2006, the number of members of the Grand Council of Berne was reduced from 200 to 160. This reduction was approved by the Berne electorate in September 2002. The canton now consists of eight divisions. The number of seats in each division depends on its population. Only the Bernese Jura (three French-speaking districts) has retained the twelve seats that it had previously. In addition, the French-speaking minority of the new bilingual division of Biel-Seeland has a guarantee of proportional representation.

In addition, the chairperson of the French-speaking "delegation"<sup>101</sup> now automatically sits on the "Bureau" of the Grand Council, which appoints members and chairpersons of special

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<sup>101</sup> The "delegation" defends the interests of the Bernese Jura and French-speaking population of the district of Biel in the Grand Council. Comprising Grand Council members representing the Bernese Jura and French-

committees, on the proposal of parliamentary groups. The Bureau is responsible for establishing the results of voting in, and elections to, the Grand Council, for ruling on the urgency of parliamentary questions, for examining and approving messages from the Grand Council on referenda and for ruling on requests for information from members of the Council.

The other statutory provisions and the rules of procedure for the Grand Council giving special rights to the French-speaking delegation remain the same.

123. In addition to the legislation regarding the Grand Council, it may also be noted that a law on the special status of the Bernese Jura and the French-speaking minority of the bilingual district of Biel (Special Status Act, LStP) was adopted in September 2004 and came into force on 1 January 2006<sup>102</sup>. This law creates a special status for the population of the Bernese Jura, allowing it to preserve its identity and strengthen its linguistic and cultural individuality within the canton, as well as to play an active part in the canton's political life. It aims to promote bilingualism in the district of Biel and to strengthen the position of the French-speaking population as a cultural and linguistic minority. It is also designed to help increase cantonal cohesion. The Special Status Act establishes two new regional authorities: the Bernese Jura Council, consisting of 24 members elected by proportional representation at the same time as the general renewal of the Grand Council, and the Council for Francophone Affairs in the bilingual district of Biel. Through the powers given to these bodies to deal directly with the administrative authorities of neighbouring regions or cantons regarding educational co-ordination and matters relating to language and culture (and administration of joint institutions in the sole case of the Bernese Jura Council), the new law is also intended to strengthen the status of the French-speaking minority of the canton of Berne with regard to external relations.

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speaking members from the Biel-Seeland division, it may request a separate vote on matters specifically concerning the French-speaking minority: if Grand Council decisions do not receive a majority of votes from the delegation, the latter may ask for a vote to be taken on an alternative decision ("suspensive veto"). The matter is then referred to the Executive Council (government).

<sup>102</sup> Cf. appended copy.