

Resolution CM/Res(2019)49 on the revised monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities

*(Adopted by the Committee of Ministers on 11 December 2019
at the 1363rd meeting of the Ministers' Deputies)*

(Revising Resolution Res(97)10 adopted by the Committee of Ministers on 17 September 1997 at the 601st meeting of the Ministers' Deputies, as modified by Resolution CM/Res(2009)3 adopted by the Committee of Ministers on 16 April 2009 at the 1054th meeting of the Ministers' Deputies)

I. The Advisory Committee provided for by Article 26 of the Framework Convention for the Protection of National Minorities (ETS No. 157): composition, election and appointment

A. Membership of the Advisory Committee

1. Members

1. Members of the Advisory Committee shall be elected and appointed in accordance with these rules. They shall sit as either ordinary or additional members.

2. The number of ordinary members of the Advisory Committee shall be a minimum of 12 and a maximum of 18.

3. Members of the Advisory Committee may not be substituted.

4. There shall not be more than one member in respect of any Party.

2. Qualifications and capacity of the members

5. The members of the Advisory Committee shall have recognised expertise in the field of the protection of national minorities.

6. The members of the Advisory Committee shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

B. Procedure for election and appointment

1. General

7. The Committee of Ministers shall elect experts to the list of experts eligible to serve on the Advisory Committee (hereafter referred to as "the list") and appoint ordinary and additional members in accordance with the following rules.

2. Election of experts to the list

8. Each Party may submit to the Secretary General the names and the curricula vitae, in one of the official languages of the Council of Europe, of at least two experts who have the required qualifications and capacity to serve on the Advisory Committee. The Secretary General shall transmit these documents to the Committee of Ministers.

9. The Committee of Ministers shall elect one of these experts and enter him/her on the list in respect of that Party.
10. Elections shall be held in the chronological order in which the names and curricula vitae submitted by Parties have been received.
11. The same procedure shall apply when entries on the list expire or lose their validity. For the sake of continuity, elections may be held during the six-month period preceding the expiry or loss of validity of the current entry on the list in respect of a Party.
12. The entry on the list shall remain valid until one of the following cases arises:
- the expert concerned requests the Secretary General to delete his/her entry on the list;
 - the Committee of Ministers finds that the expert concerned no longer has the required capacity;
 - the expert concerned dies;
 - the ordinary membership of the Advisory Committee of the expert concerned expires or ends in accordance with rule 16.
13. The Secretary General shall act as the depositary of the list.

3. Ordinary members

a. Appointment of ordinary members

14. The Committee of Ministers appoints the ordinary members from the list.
15. The Committee of Ministers shall, in filling vacant seats in the Advisory Committee, give priority to appointing, in the following order, experts on the list from the Parties in respect of which no ordinary member has been appointed:
- i. at two or more consecutive rounds of appointments immediately preceding the current one;
 - ii. at the round of appointments immediately preceding the current one; followed by experts on the list from other Parties in respect of which there is currently no ordinary member.

For each of these categories, the rule shall apply that if the number of experts entitled to appointment exceeds the number of vacant seats, ordinary members shall be selected by the Committee of Ministers through the drawing of lots.

b. Term of office of ordinary members

16. The term of office of an ordinary member of the Advisory Committee shall be four years. The Committee of Ministers shall specify the exact date on which the term of office begins. No one may be appointed to serve as an ordinary member more than twice. Ordinary membership will end at an earlier date in the following cases:
- at the request of the ordinary member to the Secretary General;
 - when the Committee of Ministers finds that an ordinary member no longer has the required capacity;
 - when the ordinary member dies.
17. In order to ensure that, as far as possible, one half of the ordinary membership of the Advisory Committee shall be renewed every two years, the Committee of Ministers may decide that the term or terms of office of one or more members to be appointed shall be for a period other than four years but not more than six and not less than two years.
18. An ordinary member appointed to fill a casual vacancy shall hold the seat for the remainder of the predecessor's term. Casual vacancies will be filled by experts entered onto the list in respect of the same Party, unless the Committee of Ministers decides otherwise.
19. Ordinary members shall not have the right to take part in a possible vote regarding the opinion on the Party in respect of which they have been elected to the list.

4. Participation of additional members in plenary meetings

20. During examination of the implementation of the Framework Convention by a Party in respect of which there is no ordinary member of the Advisory Committee, the expert who is on the list in respect of that Party shall be invited to sit as an additional member.

21. Additional members of the Advisory Committee shall only participate in the work of the Advisory Committee regarding the Party in respect of which they have been elected to the list. Additional members shall sit in an advisory capacity; they shall not have the right to take part in a possible vote.

II. The procedure to be followed in performing the monitoring functions

1. Transmission and publication of periodical State reports

22. Periodical State reports shall be submitted by the Party to the Secretary General who will forward them to the Committee of Ministers. The periodical State reports shall be made public by the Council of Europe upon receipt by the Secretary General, without prejudice to the right of the State to make the report public at an earlier date.

23. The periodical basis for transmission of periodical State reports mentioned in Article 25, paragraph 2, of the Framework Convention is set at five years, calculated from the date on which the previous periodical State report was due.

2. Consideration of periodical State reports by the Advisory Committee

24. The Committee of Ministers shall transmit the periodical State reports to the Advisory Committee.

25. The Advisory Committee shall consider the periodical State reports and shall transmit its opinions to the Committee of Ministers.

3. Failure to comply with the reporting obligation

26. The Advisory Committee may submit a proposal to the Committee of Ministers regarding the commencement of the monitoring of the Framework Convention without a periodical State report when a Party is more than 12 months behind in submitting a periodical State report, together with the information received from this Party concerning the reasons for the delay. In so doing, the Advisory Committee shall invite the Committee of Ministers to take a decision on the matter without a debate, unless at least one delegation requests that the matter be discussed.

4. Consideration of periodical state reports by the Committee of Ministers

27. Following receipt of the opinion of the Advisory Committee, the Committee of Ministers shall consider and adopt its conclusions concerning the adequacy of the measures taken by the Contracting Party concerned to give effect to the principles of the Framework Convention. It may also adopt recommendations in respect of the Party concerned, and set a time-limit for the submission of information on their implementation.

5. Publicity

28. A party may consent to the publication of the opinion of the Advisory Committee upon adoption. Otherwise, the opinion shall be made public when comments are received from the Party, but no later than four months after its transmission to the Party. The Advisory Committee shall take into account a reasoned request submitted in writing by the party concerned to postpone the publication of the opinion if necessary, but in any event for no longer than two months.

29. Comments of the Parties in relation to the opinion of the Advisory Committee shall be made public.

30. The conclusions and recommendations of the Committee of Ministers shall be made public upon adoption.

6. Working methods of the Advisory Committee

31. The Advisory Committee may request additional information from the Party whose report is under consideration and seek where appropriate information from international organisations, ombudsmen and national institutions for the promotion and protection of human rights, as well as from representatives of civil society and non-governmental organisations.

32. The Advisory Committee may hold meetings with representatives of the government whose report is being considered and shall hold such a meeting if the government concerned so requests. It may hold meetings with non-governmental bodies and independent institutions in the context of country visits.

33. The Advisory Committee may also hold meetings outside the context of a country visit with non-governmental bodies and independent institutions with prior notification of the Party concerned, in order to ensure that the Advisory Committee is provided with a balanced range of views. Such meetings should in principle be held in Strasbourg on the occasion of meetings of the Advisory Committee and within the existing budgetary resources.

34. The meetings referred to in rules 32 and 33 shall be held in closed session.

35. The Advisory Committee may decide to carry out a country visit to the Party concerned if it considers it necessary to complement the information received in writing or to evaluate the practical implementation of the measures taken.

36. The Advisory Committee shall inform the Party concerned of its intention to carry out the country visit. Parties shall appoint a "contact person" to liaise with the Advisory Committee, notably in order to facilitate the organisation of country visits.

37. Draft opinions shall be examined by the Advisory Committee in plenary. A draft opinion as approved by the Advisory Committee shall be transmitted to the Party concerned for written observations to be provided within a time limit set by the Advisory Committee, as appropriate after consultation of the Party, with a minimum of two months, to allow the Party to point out any inaccuracies of a factual nature or indicate any elements requiring clarification. The Advisory Committee and the Party shall treat the draft opinion and any written observations on it as confidential. Written observations on the draft opinion submitted within the time-limit set by the Advisory Committee shall be examined by it before adopting its opinion.

38. After transmission of the opinion as adopted to the Party concerned, the latter may submit written comments to the Advisory Committee.

7. Ad hoc procedures

39. The Advisory Committee may invite the Committee of Ministers to request an ad hoc report from a Party.

40.¹ If the Advisory Committee considers, on the basis of the information at its disposal, that a situation or development warrants an urgent examination in the light of the principles set out in the Framework Convention, it may make an urgent request for information to any Party to the Framework Convention. If necessary, the Advisory Committee may, after having notified the Committee of Ministers and with the agreement of the Party concerned, carry out a country visit to that Party, in accordance with, *mutatis mutandis*, rules 32 to 36. The Advisory Committee shall transmit its findings and conclusions to the Party concerned and to the Committee of Ministers and shall make them public together with any comments from the Party concerned.

8. Follow-up

41. The Advisory Committee shall be involved in the monitoring of the follow-up to the conclusions and recommendations on an ad hoc basis, as instructed by the Committee of Ministers. In this context, Parties may be invited to inform the Advisory Committee of the follow-up given to the Committee of Ministers' conclusions and recommendations in due time following their adoption.

¹ At the time of the adoption of this resolution, the Russian Federation stated that it reserves its position regarding paragraph 40 of the revised resolution and does not consider itself bound by the procedures set out therein, and that it retains the right to reconsider this reservation at a later stage. Azerbaijan also reserved its position in relation to this paragraph.

9. Rules of procedure and activity reports

42. The Advisory Committee shall draft its rules of procedure which shall be submitted to the Committee of Ministers for approval. The same procedure shall apply to any subsequent modification to the rules of procedure.

43. The Advisory Committee shall periodically inform the Committee of Ministers on the state of its work.

III. Participation in the Committee of Ministers' meetings

44. The Committee of Ministers shall invite a representative from each non-member Party to attend the meetings of the Committee of Ministers – without the right to participate in the adoption of decisions – whenever it exercises its functions under the Framework Convention.

45. The Committee of Ministers may invite the Advisory Committee to be represented at meetings held for the purposes of monitoring under the Framework Convention, in order to introduce opinions and if necessary, answer questions concerning them.

IV. Entry into force

46. The present resolution will enter into force on 1 January 2020.