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

**COMMENTS OF THE GOVERNMENT OF MONTENEGRO
ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES
BY MONTENEGRO**

(received on 24 February 2014)



GOVERNMENT OF MONTENEGRO
Ministry for Human and Minority Rights

COMMENTS

**On the Advisory Committee's second Opinion on the implementation
of the Framework Convention
for the Protection of National Minorities**
ACFC/OP/II(2013)002 – adopted on 19 June 2013

Podgorica, February 2014

I GENERAL COMMENT

Montenegro is pleased with the fact that the Advisory Committee (under the second national report of Montenegro on implementation of the Framework Convention for the Protection of National Minorities, the direct contact of the delegation of the Advisory Committee with representatives of the Government, local authorities, minority councils and NGOs and on other independent sources) noted that Montenegro is taking important steps to further improve the status of minorities and other minority communities.

Since the regaining of Montenegro independence in May 2006, significant progress has been made, both in the formulation of legislation and adoption of strategic documents, as well as in their implementation. Montenegro is committed to further improving the long tradition of interethnic, inter-confessional and intercultural relations. Montenegro still considers its national diversity as a wealth, not the shortcoming, and thus relates to every citizen.

Besides the internal cohesion, the interest of Montenegro is to have a good relation with the neighboring countries, and thus Montenegro is having dynamic relationship with its neighbors. This dynamic is reflected in a very good communication in the economic and trade, as well as the cultural, scientific and sports areas.

Pursuant to the provisions of Article 25, Paragraph 1 of the Framework Convention, Montenegro submitted its Initial Report in June 2007, and the Government of Montenegro adopted the second Report on 06 September 2012. This Report aimed to highlight the legislative, institutional and other measures that Montenegro has undertaken to meet the obligations stipulated by the Framework Convention. The Working Group set up for developing the report, has written it according to the principle of realistic insight into the degree of implementation of the provisions of the Framework Convention, both in terms of solutions in Montenegrin legislation and the practical use of these solutions as well. We believe that the Report, and direct contact with the delegation of the Advisory Committee who visited Montenegro from 28 January to 1 February 2013, contributed to providing all the necessary information to the Advisory Committee believing that it could create a realistic picture of the situation of minority rights in Montenegro and based on that the second Report was made.

II COMMENT TO THE MAIN FINDINGS, ARTICLE-BY-ARTICLE FINDINGS AND CONCLUDING REMARKS

Comment to the Paragraph 8

Draft second Report has been published on the website of the Ministry of Human and Minority Rights on 27 July 2012. In addition, it was sent to all minority councils and via mailing list to the non-governmental organizations, in order to have an insight into its content and submit their suggestions. The suggestions were submitted by the Capital Podgorica and Bosniak Council. This shows the respect for transparency and opportunity for all stakeholders to take part in the preparation of the Report.

Comment to the Paragraphs 11, 28, 191, 193, 194, 195, 238

The Law on Minority Rights and Freedoms has defined the role of the minority councils. It:

- represents a minority;
- submits proposals to state bodies, local authorities and public services for the promotion and development of the rights of minorities and their members;

- submits the initiative to the President of Montenegro not to declare the Law which violates the rights of minorities and their members;
- Participates in the planning and establishment of educational institutions;
- Provides an opinion on curriculums that reflect specificities of minorities;
- Proposes the enrollment of a number of students at the University of Montenegro;
- Launches an initiative to amend the regulations and other laws governing the rights of persons belonging to minorities;
- Gives an opinion on the selection of school principals where the teaching is performed in the minority language;
- University of Montenegro, on the proposal of the Minority Councils, may enroll each academic year a number of students belonging to minorities, in accordance with the University Act;
- The representation of minorities is arranged by the authorities in charge of personnel issues, in cooperation with the councils;
- Co-operates with local authorities;
- And performs other duties in accordance with the Law

Since the Council is represented by a particular minority, their acts, direct communication, direct involvement in the creation of certain policies, the council participates in direct way in the political life at the local and national level.

Councils are not NGOs. NGOs are registered in accordance with the Law on Non-Governmental Organizations and the register is kept by the Ministry of Internal Affairs, and Minority Councils are registered in accordance with the Law on Minority Rights and Freedoms and the register is kept by the Ministry of Human and Minority Rights.

Article 33 of the Law on Minority Rights and Freedoms defines: "The Council of minority nations and other minority national communities consists of ex officio members: MPs and government members from the ranks of the respective minority nations and other minority national communities, mayors, presidents of urban municipalities, presidents of municipal assemblies, presidents of assembly urban municipalities, presidents of parties represented in the Parliament, the municipal assembly of the City Council from among the respective minority nations and other minority national communities.

Its membership in the Council of minority nations and other minority national communities is confirmed in paragraph 5 of this article by the statement of acceptance of membership.

Other members of the minority council shall be elected by secret ballot at the electoral assembly of the minority nations and other minority national communities".

This way of setting up the council, prevents the dominance of one political group since a number of members of the Council are there ex officio and come from different political parties. In addition, the second part of members is elected at the electoral assembly, so that thereby establishes parity between "political" and "independent" composition of a council.

Comments to the paragraphs 15, 57, 58, 66, 232

Aware of the shortcomings of the Anti-Discrimination Law and the Law on Ombudsman, which you also pointed out, the Ministry has initiated the procedure of amendments to the two laws. Proposed amendments to both laws have been adopted by the Government of Montenegro and are currently in the Parliament procedure.

Law on Amendments to the Law on the Prohibition of Discrimination envisages the following amendments:

- It changed the concept of direct and indirect discrimination and it is in full compliance with the European legislation;
- The separate paragraph of the Law explicitly states that this Law applies to both public and private sector.

- The Law contains the new forms of discrimination: harassment, sexual harassment and racial discrimination. Also, the comprehensive definition of a hate speech is given (in accordance with the Recommendation on Hate Speech of the Council of Europe Committee of Ministers), in order to clearly punish the hate speech within this Law;
- Prohibition of victimization is provided in the paragraph which stipulates the protection of persons from any harmful action or consequences as the reaction to the proceeding run due to violation of antidiscrimination principle;
- The concept of segregation is changed, as well as direct discrimination, since there is no excuse;
- The terms are defined: gender identity and sexual orientation, in order to avoid confusion in the application of law in practice;
- The jurisdiction of the Protector of Human Rights and Freedoms was specified as the institutional mechanism for the implementation of this Law;
- The deadline for filing a complaint before the court, caused by discrimination, is extended from 90 days to one year;
- The article was amended, which sets out the persons who may submit a complaint with the attitude that even the checking of the existence of discrimination may be grounds for filing a complaint for protection from discrimination;
- The obligation of keeping records on cases of discrimination that so far was led by the courts, misdemeanor bodies and inspection, is now extended to the prosecution and the police;
- Penalties for discrimination have been strengthened and specified, which by this Law prescribes the fine sentence in the range of 500,00-20,000.00 EUR;

Key changes that significantly improved the text of the Law on the Protector of Human Rights and Freedoms are the following:

- Article 7 of the current Law governing the procedure for the appointment, has been expanded by provisions that provide a more transparent process of selection of candidates for the Ombudsman by the President of the State, who shall hold consultations with academic and professional institutions and civil society organizations whose main activity is the protection of human rights and freedoms, and also noted that the procedure for the appointment of a new Ombudsman commences no later than 60 days prior to the expiration of the mandate of the Ombudsman;
- The obligation of receipt the Ombudsman at his/her request without delay have been introduced, and this obligation is extended to all the heads of institutions and, from now on, the Ombudsman will have the opportunity to directly meet them;
- The competencies in performing the protection against torture have been expanded such as: visit to the closed institutions can be made, under the authority of Ombudsman, by advisers and members of the Working Body established by the Ombudsman for these tasks, while they don't have to announce the visit to the authorities, institutions and organization where the visit takes place.
- As regards the powers of the Ombudsman as a National preventive mechanism, the suggestions have been introduced related to the higher level of its powers and the provisions were modified providing full, unlimited access to the Ombudsman, the Deputy Ombudsman, advisers and members of the Working Body for prevention of torture, to all rooms and access to necessary documentation, without limits and regardless of the degree of secrecy.

Amendments to the Law significantly improved the financial position of the Ombudsman for Human Rights and Freedoms aimed at achieving “financial independence”. The provision was included which significantly enhance the position of employees in this institution. Furthermore, in accordance with the budget, the new provision has been introduced which enables Protector to independently decide on employment, rights, obligations and responsibilities of the employees and is not obligated to obtain the permits or approvals from the minister in charge of the budget;

- Provision has been introduced which provides the permanent protection of persons employed in the Ombudsman institution from any sanctions or adverse consequences that could potentially suffer from given opinions and recommendations, i.e. or acts in accordance with its powers stipulated by this Law.

Comments to the paragraphs 20, 120, 121

Public Radio and Television of Montenegro are accessible all over Montenegro. In the first report regarding the implementation of Article 9 it is said: "Certain parts of Montenegro have the ability to receive radio and television programs from the neighboring countries". This means to receive analogue terrestrial radio and TV programs that are broadcasted from the territory of Serbia, Bosnia and Herzegovina, Croatia, Albania and Italy. Quality reception of these channels over the border zone with some neighbors is provided in significant part of Montenegro (especially in the case of Albania and Italy). Reception of these channels is not prevented by Montenegro except in a case of broadcasting, which makes harmful interference to broadcasters from Montenegro, who has duly issued license and use of internationally co-ordinate broadcast frequency.

During 2007, the licenses were issued for the cable, MMDS (wireless), satellite (DTH) and IP (Internet Protocol) distribution of radio and TV programs to the final users. In this way, a large number of radio and TV broadcasts from neighboring countries may be listened/watched on the territory of Montenegro. The offer of all operators contains programs of public and commercial broadcasters from the region and beyond. Some commercially broadcasting services in Montenegro as part of its program rebroadcast parts of TV stations from neighboring countries (Serbia, Albania, Bosnia and Herzegovina), which is in accordance with the issued licenses.

Public Service Radio, Television of Montenegro and Pobjeda, and local public services as well, not only through programs in Albanian and Roma language, but rather through the content of their programs contribute to the development of Montenegro as a multinational and multiethnic society. Shows of traditions, customs, and culture of minorities, and religious programs are present in the public service. Also, through the campaign of tolerance and mutual understanding the public service affect the entire Montenegrin society. In addition, public service and commercial media strictly implement legal provisions prohibiting hate speech and incitement of racial, religious and ethnic intolerance.

Comment to the paragraphs 22, 145

Translations of the textbooks from Montenegrin to Albanian language have been performed by interpreters in the Albanian language.

Comment to the paragraphs 26, 179, 182, 237

The affirmative action principle for all minority nations was defined by the Electoral Law and reflects the following:

- Possibility of a fewer number of candidates in the electoral lists submitted by citizen groups or political parties representing minority nation or minority national communities;

Fewer number of signatures to verify the electoral list submitted by citizen groups or political parties representing minority nation or minority ethnic communities;

- Favorable treatment when none of the electoral lists for the election of members of certain minority groups or minority ethnic communities do not meet the defined threshold of 3% of the total number of valid votes, and singles win at least 0.7% of the valid votes, are eligible to participate in the distribution of mandates as one general electoral list with the total number of valid votes received, having regard that the calculation of the mandate will recognize the joining that provides winning up to three seats;

These rights may be exercised by minorities that make up to 15% in the total population, according to the last Population Census. Additional favorable treatment for Croatian minority (0,35%) has been introduced since the Croats make less than 1% of the population.

Roma persons have not still been politically activated, i.e. there is still no Roma political party registered in Montenegro, who could use the favorable position cited in the above electoral law.

Comment to the paragraphs 27, 192

Ministry for Human and Minority Rights adopted the Rules for the election of members of minority councils in 2013. This document was developed in cooperation with representatives of the councils, and published in the Official Gazette of Montenegro 12/13 of 01 March 2013. The adoption of this document provided the legal preconditions for the process of election the new composition of minority councils.

Rules are the document that specifically regulates: the method of determining the number of council members, calling for participation in the electoral assembly, the requirements for electors, convening the electoral assembly, operation and decision making in the electoral assembly, the method of electing members of the Council of the electoral assembly, the method of subsequent filling of membership in the Council, the method of first council election, methods and opportunities for dissolution of councils, terms for prescribed procedures and so on. An integral part of these Rules are prescribed forms for certain actions. The selection procedure of new composition of the Council is made in accordance with these Rules.

Comment to the paragraphs 30, 73, 74, 155, 157, 159, 200, 233, 236

Government of Montenegro, in cooperation with international partners, pays special attention, for a number of years, to the resolution of the status of IDPs, especially those situated in the kamp Konik, in Podgorica. Around 1.300 persons are currently living in the kamp Konik.

The registration of children in the record books is performed in accordance with current legislative, and favorable conditions are made for Roma population goes in adoption of the contentious proceedings. Children who are not registered at birth, nor have the documentation, they have the right to the education.

Elementary School "Bozidar Vukovic-Podgoričanin" in Konik, for the second year does not enroll children in the first grade. Also, a number of children (140), in order to prevent segregation, are provided with free transport in the six other elementary schools in the city.

Comment to the paragraph 75

The representatives of the Roma Council (Muhamed Uković, vice-president of the Roma Council) and the representative of the nongovernmental Roma organizations (Fana Delija) participated in the development of the Strategy for Improvement of the Status of Roma and Egyptians in Montenegro 2012-2016. While developing the Strategy, in cooperation with OSCE, three days seminar has been organized, with participation of representatives of state bodies,

nongovernmental organizations and Roma Council. Furthermore, the representatives of nongovernmental organizations and Roma Council are sitting in the Commission who is in charge for monitoring the implementation of the Strategy.

Comment to the paragraphs 85, 190

Fund for the Protection and Realization of the Rights of Minorities has a Steering Committee consisting of 15 members. Out of the 15 members, six of them are representatives of the minority councils, participating in decision-making. So far, representatives of the councils have not distanced themselves from any decision of the Steering Committee.

Comment to the paragraph 131

Citizen whose name in a public document was written incorrectly may, before the competent authority, start a proceeding and make a correction of the name. Correction of wrongly inscribed personal name was free of charge for a period of five years from the date of application of the Law. Correction of wrongly inscribed personal names is still possible to execute, with payment of administrative fees.

Comment to the paragraph 139

In so far work of the Ministry for Human and Minority Rights there have been no requests from minorities in other areas (except those listed in the Initial and Second Report) to write topographic signs in their own language.

Comment to the paragraphs 170, 212

Article 17 of the Law on Minority Rights and Freedoms stipulates that minorities and their members have the right to establish educational institutions, and the funding of educational institutions is the obligation of its founders. Except for the high school "Drita" in Ulcinj, there has been no request for the establishment of educational institutions. Medresa in Tuzi is a religious high school, and thus a model of inclusion of this school into the education system is looking for, given that religious teaching is outside the formal education system.

Teaching in the Albanian language in primary schools in Rozaje and Bar have been organized, while in the secondary it is not. Children, who wish to continue their secondary education in the Albanian language, can enroll a school in the neighboring municipalities (Ulcinj, Plav), where there is a secondary education in the Albanian language.

III CONCLUDING COMMENT

Montenegro once again expresses its appreciation to the Advisory Committee on the examination and analysis of the second National Report on the implementation of the provisions of the Framework Convention for the Protection of National Minorities, and the concluding remarks given in its second Opinion. All mentioned issues of concern, both in terms of shaping the legal norms in the field of protection of minority rights, and in terms of their direct application in practice, will be used as guidelines for future work for the Government. We believe that, in addition to the guaranteed minority rights by the Constitution and the Law, and the implementation of our strategic documents in the future, we will improve our good interethnic relations and the exercise of minority rights to an even higher level. The commitment of the Government of Montenegro to these issues will still remain in its future work.

Second Opinion of the Advisory Committee on implementation of the Framework Convention for the Protection of National Minorities has been translated and published at the web page of the Ministry of Human and Minority Rights <http://www.mmp.gov.me/rubrike/Strategija-Savjeta-Evrope/135718/II-misljenje-o-Crnoj-Gori-Savjetodavnog-odbora-o-Okvirnoj-konvenciji-za-zastitu-nacionalnih-manjina.html>.