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

Second Opinion on Montenegro adopted on 19 June 2013

EXECUTIVE SUMMARY

Since the adoption of the Advisory Committee's first Opinion in February 2008, the authorities of Montenegro have taken further steps to improve the implementation of the Framework Convention and have maintained their inclusive and flexible approach to its personal scope of application. The legal and institutional framework pertaining to the implementation of the Framework Convention has been strengthened by the adoption of important legislation in the field of antidiscrimination. Also, a new Law on the Protector of Human Rights, which has been given the task of enforcing the Law on the Prohibition of Discrimination, was adopted in 2011. The census of 2011 provided useful data on the population disaggregated by ethnic affiliation, religion and mother tongue.

A climate of tolerance and understanding between persons belonging to national minorities and the majority continues to prevail in Montenegro. Electoral legislation was amended in 2011 and 2012 to create more favourable conditions for the election of national minority Members of Parliament. The authorities continue to provide various forms of assistance in the field of minority culture and media broadcasting in the languages of national minorities. Teaching in minority languages is organised at the primary and secondary level in the municipalities inhabited by persons belonging to the Albanian minority. New curricula in the field of language and literature, including elements of Serbian, Bosnian and Croatian language and literature at the primary and secondary level have been developed.

Problems remain, however, in the implementation of provisions of the Framework Convention, in a number of areas. The provisions of the Electoral Law create an unreasonable distinction in treatment between candidates of different minorities and may lead to discrimination. The continued existence of the Konik Camp, where over 2 000 internally displaced persons (IDPs), mainly Roma from Kosovo*, have been living for over a decade in most deplorable conditions, suggests insufficient will on the part of the authorities to resolve the issue. Negative stereotypes and prejudice against persons belonging to the Roma minority, in particular the IDPs from Kosovo* continue to persist. In spite of the authorities' efforts to improve education opportunities for Roma children, significant challenges remain to be overcome.

There have been no changes to the unclear legislative provisions on the modalities for implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities and to display topographical indications in minority languages. The Councils of Minority Nations are perceived by large segments of Montenegrin society as vehicles for political patronage due to their composition and their vaguely defined legal status.

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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

SECOND OPINION ON MONTENEGRO

1. The Advisory Committee adopted the present Opinion on 19 June 2013 in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the State Report (hereinafter the State Report), received on 12 September 2012, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Podgorica, Plav and Tuzi from 28 January to 1 February 2013.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Montenegro. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Montenegro adopted on 28 February 2008, and in the Committee of Ministers' corresponding Resolution, adopted on 18 November 2008.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Montenegro.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Montenegro as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.
6. The Advisory Committee would also like to bring to the attention of State Parties that on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's Opinion and other monitoring documents, aiming at increasing transparency and at sharing the information on the monitoring findings and conclusions with all the parties involved at an early stage (see Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities).

I. MAIN FINDINGS

Monitoring procedure

7. Montenegro has adopted a constructive approach to the Framework Convention's monitoring process. The authorities opted for an early publication of the first Opinion of the Advisory Committee and, in March 2010, organised a "follow-up" seminar, to discuss the conclusions of the first monitoring cycle with representatives of national minorities and of the Advisory Committee.

8. The 2nd State Report contains comprehensive, well-structured information on the legal framework and relevant administrative practice. The Advisory Committee appreciates the inclusion of up-to date statistical information. It regrets however that, according to representatives of Councils of Minority Nations (hereinafter Minority Councils), the report was prepared without their involvement.

9. The Advisory Committee visited Montenegro from 28 January to 1 February 2013. The visit, organised at the invitation of the Government of Montenegro, provided an opportunity to engage in direct dialogue with the parties concerned. The additional information gathered from the government and other sources, including representatives of national minorities, proved particularly useful. Talks were held in Podgorica, Plav and Tuzi. The Advisory Committee welcomes the spirit of co-operation shown by the authorities during the process which led to the adoption of the present Opinion.

General legislative and institutional framework

10. The authorities have pursued their efforts to protect national minorities since the accession to the Framework Convention in 2006, and have also maintained an inclusive approach in practice in communication with representatives of the national minorities. The Ministry of Human and Minority Rights plays a principal role in coordinating the state's policy towards national minorities and is the principal interlocutor of the Minority Councils established under the Law on Minority Rights and Freedoms of 2006, as amended in 2011, (hereinafter the Law on Minority Rights).

11. The Minority Councils representing the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities have been established and play active roles in stimulating public debate on issues affecting national minorities. Their functioning is supported financially by the authorities. One representative of each Minority Council sits in the governing board of the Fund for Minorities, which is responsible for disbursement of funding to support the activities aimed at the preservation of national, cultural, linguistic and religious identities of persons belonging to national minorities. The Advisory Committee notes, however, that the role of the Minority Councils remains vague and their composition makes them open to criticism and perception of being vehicles of political patronage. Although, the Minority Councils were established under the Law on Minority Rights and have a role in the legislative process, they are essentially considered to be non-governmental organisations, without any real decision-making powers. Their situation is aggravated by the fact that each of them acts independently, and there is no institutionalised structure which would allow them to speak to the authorities with one voice on behalf of all the minorities.

12. The Advisory Committee welcomes the fact that the basic legislative provisions guaranteeing the rights of persons belonging to national minorities contained in the Law on Minority Rights and the Constitution of 2007 were expanded significantly and further strengthened by the adoption or amendment of a number of legislative acts in the field of data protection, culture, education, elections, civil registration and identity documents. These affect the implementation of rights of persons belonging to national minorities in a direct or indirect way. It has been reported to the Advisory Committee, however, that although the legislative basis can be considered adequate, there are significant problems with the implementation of laws.

13. Since the last cycle of monitoring, Montenegro has not amended the definition of the term “national minority” contained in the Law on Minority Rights to ensure that it is harmonised with the Constitution of Montenegro. In particular, whereas the Law on Minority Rights establishes a direct link between citizenship and national minorities, the Constitution of 2007 makes no such explicit link. The Advisory Committee considers that the existence of such a contradiction, notwithstanding the obligation to harmonise the provisions of the Law on Minority Rights with the Constitution, as provided for by the Constitutional Law for the Implementation of the Constitution of the Republic of Montenegro, is a discrepancy which should be eliminated.

Combating discrimination

14. Montenegro has continued to develop its legislative framework to combat discrimination. The Law on the Prohibition of Discrimination was adopted in 2010. It provides remedies to victims of discrimination through courts and by way of applying to the Protector of Human Rights. The Council for the Protection against Discrimination, overseen by the Prime Minister and composed of senior ministers and representatives of non-governmental organisations, was established in 2011. The council’s main tasks are to monitor and coordinate the activities of state authorities, state administration bodies and other institutions in applying the antidiscrimination mechanisms and measures and to screen the applicable legislation, in order to ensure compatibility with ratified international conventions on human rights and freedoms. In addition, Montenegro adopted the Law on Free Legal Aid, establishing modalities of assistance to persons unable to afford legal advice, irrespective of whether they are citizens, foreign nationals or asylum seekers.

15. It has to be noted, however, that the definition of discrimination contained in the Law on the Prohibition of Discrimination does not fully comply with international standards. Also, the task of dealing with discrimination cases has been given to the Protector of Human Rights, an institution lacking sufficient independence and resources to implement the law.

Protection and promotion of minority identities and cultures

16. The authorities continue to support cultural centres, libraries, music and drama festivals, art exhibitions, amateur cultural productions and other artistic events promoting cultures of national minorities. The Law on Monuments and the Law on Culture, both adopted in 2008, establish standards for the protection and the promotion of culture based on the freedom of expression and respect for cultural rights, with equal preservation of all cultural identities and respect for cultural diversity. The Centre for the Preservation and Development of Minority

Cultures was established in 2009 and actively promotes minority cultures, affirming multiculturalism as one of the founding principles of the state of Montenegro.

Tolerance and inter-ethnic relations

17. The Advisory Committee notes that a climate of tolerance and dialogue generally prevails in Montenegro, including municipalities with ethnically mixed populations. This climate is marked by a spirit of mutual respect and understanding, as commented favourably by the minority representatives themselves. In 2008, Montenegro ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and a number of laws (including the Law on Monuments and the Law on Culture) have subsequently been adopted. Since its creation, the Centre for the Preservation and Development of Minority Cultures has taken a leading role in promoting cultural diversity and intercultural dialogue in Montenegro. Against this generally positive background, the Advisory Committee notes persistent negative stereotypes and prejudice against persons belonging to the Roma minority. Also, representatives of national minorities point to a lack of awareness of national minorities' identities and religions, cultural and social customs and traditions.

Access to media and presence in the media

18. The Law on Electronic Media, adopted in 2010, obliges the public broadcasters to produce and broadcast programmes reflecting the cultural identity of all segments of society, including national minorities, and to produce and broadcast programmes in languages of national minorities. Public television and radio continue to broadcast programmes addressed to persons belonging to national minorities in their minority languages. The state television broadcasting company produces daily 10-minute information programmes and weekly 45-minute long programmes in the Albanian language. The Advisory Committee welcomes the subtitling in the Montenegrin language of the daily news programme in the Albanian language.

19. The printed media of national minorities in Albanian, Bosnian, Croatian and Serbian languages continue to be published with the support of the Fund for Minorities. It is also noteworthy that magazine "Alav", written in standardised Romani language and produced by Roma journalists, is in print since 2012, and was the first such paper in Montenegro.

20. In spite of the above-mentioned positive developments, representatives of national minorities continue to raise concerns about the territorial coverage of programmes produced in the languages of national minorities. Additionally, recent cuts in the funding of the public TV and radio programmes have had a negative effect on the number of journalists employed to produce programmes for national minorities. Representatives of national minorities informed also the Advisory Committee about the lack of interest of the mainstream media in national minority issues and in particular in the work of the Minority Councils. This impacts negatively on the perception of their mandate and work.

Use of languages of national minorities in communication with public authorities and for topographical indications

21. Since the first monitoring cycle, there have been no changes to the legislative provisions on the right of persons belonging to national minorities to use their languages in relations with administrative authorities and to display topographical indications in minority languages. The

provisions of the Law on Minority Rights laying down that these rights are to be implemented “in the local self-government units in which persons belonging to national minorities constitute a majority or a considerable part of the population according to the last census” is vague and open to interpretation. The Advisory Committee welcomes, however, that these rights are respected in practice in areas where persons belonging to national minorities constitute a considerable part of the population, for example in Plav, Tuzi and Ulcinj.

Education

22. Teaching in the Albanian language is organised at the primary and secondary level in the municipalities where persons belonging to the Albanian minority “constitute a majority or a considerable part of the population” and the authorities are endeavouring to improve the accessibility of textbooks in minority languages. At the primary school level textbooks required for subjects taught in the Albanian language have either been written in Albanian or translated from Montenegrin into Albanian. The Advisory Committee notes however, that, according to representatives of the Albanian minority, the quality of translation of some textbooks from Montenegrin into Albanian language is very poor and that the lack of textbooks for some subjects was hampering knowledge acquisition altogether. It was also pointed out that some textbooks do not reflect Albanian culture adequately.

23. New curricula in the field of language and literature, including elements of Bosnian, Croatian and Serbian language and literature at the primary and secondary level have been developed. It appears, however, that the possibility for local schools to devote 20% of the curriculum to the needs and interests of persons belonging to national minorities continues to be rarely used.

24. The number of Roma children attending primary schools has been increasing steadily during the last decade. It has to be noted however, that although the number of Roma children in high schools has been also increasing, only 78 Roma children continue their education past the primary level. This demonstrates that there is still an urgent need for sustained efforts in this regard.

25. Given this context, the initiatives undertaken by the Ministry of Human and Minority Rights, together with the Ministry of Education and the Roma Minority Council to assist Roma students in the education process are to be welcomed. These include special scholarships, dormitories, transportation and tuition support for Roma children attending secondary and tertiary education, financing of Roma educational assistants and special measures entitling Roma students to enrol at the Podgorica University.

Participation

26. The electoral legislation has been amended to create more favourable conditions for election of national minority deputies. Political parties representing national minorities may, by pooling of votes on a collective list, more easily reach the 3% threshold, provided that each individual minority party wins at least 0,7% of the votes. In addition, a particular rule setting the threshold at 0,35% of the votes has been introduced for the Croat minority, which is numerically smaller than other minorities. Notably, the legislation creates an unjustified distinction in treatment between candidates of the Croat minority and Roma, whose number, according to the

census of 2011 is very similar. This may lead to discrimination, contrary to the provisions of Articles 4 and 15 of the Framework Convention.

27. Minority Councils have been established to represent the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities. Each council numbers between 17 and 35 members and is composed half by ex-officio members (Members of Parliament and of the government, mayors and presidents of municipal assemblies representing respective minorities) and half by representatives of civil society elected at electoral assemblies of Minority Councils. The Advisory Committee notes with concern that the composition of the councils established in this manner has consequences for the focus on issues of concern for persons belonging to national minorities. The Advisory Committee also notes that there is no mechanism to guarantee a gender balance in the composition of the Minority Councils.

28. Another challenge facing the councils is their vaguely defined legal status. Although they have been established by the law and have a role in the legislative process to propose amendments to legislation, they do not have real decision-making powers and are considered to be non-governmental organisations.

Situation of the Roma

29. Notwithstanding efforts made by the authorities to improve the situation of the Roma in a range of areas, in particular in the framework of the 2012-2016 Strategy to Improve the Position of Roma and Egyptians in Montenegro, the authorities recognise that a large number of Roma do not participate in the economic life of the country. According to the Roma representatives, the prejudice against Roma lingering among the population is confirmed by the fact that even the better educated Roma, including university graduates, are offered only unskilled employment.

30. The continued existence of the Konik Camp is of deep concern. Over 2 000 internally displaced persons (IDPs), mainly Roma from Kosovo* have been living for over a decade in most deplorable conditions, without electricity, running water and sanitation facilities. This suggests insufficient will on the part of the authorities to resolve the issue. It is welcome in this context, that the deadline for IDPs to regularise their status has been repeatedly extended; out of an estimated 16 000 IDPs in Montenegro over 9 500 persons are undergoing the regularisation procedure. Several hundred Roma IDPs have received support from the authorities (including organised transportation and financial support) to help them obtain identity documents. Regrettably, in spite of these initiatives, a significant number of them still do not have identity documents and cannot regularise their status. It is particularly unacceptable that there are still an estimated 400 Roma children, mostly internally displaced, who cannot attend schools due to the lack of identity documents.

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II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Findings of the first cycle

31. In its first Opinion, the Advisory Committee considered that the authorities should amend the definition of national minorities included in the 2006 Law on Minority Rights in order to limit the use of the citizenship requirement only to those provisions, where it was relevant.

32. The Advisory Committee also noted that some minorities' identities had been fluctuating over time in Montenegro, and considered that the authorities should ensure that whatever the position taken by the persons concerned, the principle of free self-identification with a national minority was duly respected.

Present situation

a) Positive developments

33. The Advisory Committee notes that the Constitution of Montenegro of 2007 identifies the nations and national minorities living in Montenegro as Montenegrins, Serbs, Bosnians, Albanians, Muslims, Croats and "others" as free and equal citizens loyal to the democratic and civic state. Article 13 of the Constitution further proclaims that the Montenegrin language shall be the official language with both Cyrillic and Latin scripts being equal, but also recognises Serbian, Bosnian, Albanian and Croatian languages as being in official use. The Advisory Committee further notes that the Law on Minority Rights does not contain a list of national minorities falling under its scope.

34. Both the Constitution of Montenegro and the afore-mentioned Law on Minority Rights provide a sound legal basis for the protection of national minorities. Article 79 of the Constitution of Montenegro enumerates the minority rights guaranteed in a list which closely reflects the rights guaranteed under the Framework Convention and in the Law on Minority Rights. The Advisory Committee notes with satisfaction that the Constitution, in the Article cited above, does not refer to the citizenship criterion included in the definition of national minorities contained in the Law on Minority Rights. Notably, the Montenegrin authorities' position in practice is open and flexible. The Advisory Committee welcomes the fact that the authorities continue to consider, where appropriate, the application of the Framework Convention to persons without Montenegrin citizenship on an article-by-article basis. This is of particular importance to Roma and Egyptians, a significant number of whom do not possess Montenegrin citizenship in spite of the fact that they have resided in Montenegro as IDPs for over 10 years.

35. The Advisory Committee commends that the right to free self-identification with a national minority was duly respected during the census conducted in April 2011 and that the respondents were free to indicate the ethnic affiliation of their choice or not in response to the census question (see paragraphs 42-45 below for details).

b) Outstanding issues

36. The Advisory Committee notes that no single national group constitutes the absolute majority, with Montenegrins numbering just under 45% of the population of Montenegro, according to the latest census. National and ethnic identities continue to evolve, as persons belonging to different groups are free to express their identity, which in some cases is a multiple one and requires a hyphenated definition. In this context the Advisory Committee learns with interest that some groups that appeared for the first time in the 2011 census results include: Muslims-Bosniaks, Muslims-Montenegrins, Montenegrins-Serbs, Serbs-Montenegrins, Gorani and other groups. Also, the number of persons declaring their Roma and Egyptian nationality has risen very significantly since the census of 2003. This demonstrates a greater awareness of identity and willingness to freely declare it, which is welcome.

37. The Advisory Committee notes with regret that the definition of national minority included in the Article 2 of the Law on Minority Rights has not been revised since the last cycle. The official approach, as embodied in the law, is that the personal scope of application of the Framework Convention applies only to citizens, although - as it was already noted - in practice, the authorities display openness and flexibility. The Advisory Committee finds that for the sake of clarity and consistency Article 2 of the Law on Minority Rights should not limit the scope of application of minority rights to citizens only in order to make it compatible with the Constitution.

Recommendations

38. The Advisory Committee reiterates its call on the authorities to consider amending the definition of the term "national minority" contained in the Law on Minority Rights and apply the provisions of the law in an open and flexible manner, without limiting the personal scope of application of the Framework Convention to citizens only.

39. The Advisory Committee encourages the authorities to continue the dialogue with representatives of national minorities, in particular those mentioned as "others" in the Preamble of the Constitution and who are not expressly recognised by the law, and to consider the possibility of including them in the scope of application of the Framework Convention.

Data collection*Findings of the first cycle*

40. In its first Opinion, the Advisory Committee found that there was a general lack of data disaggregated by ethnicity, sex and geographical location and encouraged the authorities to step up their efforts to obtain reliable statistical data on the socio-economic position of national minorities in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification.

41. Furthermore, it also observed that the legislation of Montenegro did not provide adequate guarantees for the protection of personal data and considered that the authorities should urgently complete their planned revision of the Personal Data Protection Law in order for any personal data collection to fulfil the principles of Committee of Ministers' Recommendation (97) 18

concerning the protection of personal data collected and processed for statistical purposes as well as international standards on the protection of personal data.

Present situation

a) Positive developments

42. The Advisory Committee notes that the first population census in Montenegro since the country's independence was conducted in April 2011. The Advisory Committee commends that the questionnaire used in the census was drafted in accordance with the pertinent EUROSAT recommendations.¹ This questionnaire contained optional, open-ended questions on ethnicity, mother tongue and religion. In accordance with the adopted methodology for preparing, organising and conducting the census, respondents were not obliged to answer these three questions. The Advisory Committee notes that 4.87% of respondents chose not to answer the question on ethnicity, 3.99% of respondents did not answer the question on their mother tongue and 2.61% chose not to answer the question regarding their religious affiliation.

43. The Advisory Committee notes that the census results providing data on population disaggregated by nationality, religion and mother tongue, type of settlement per municipalities were published in July 2011, and that available data can be disaggregated further by age, gender and other criteria and cross-tabulated with economic and social indicators, depending on need.

44. It is also to be welcomed that the census forms and explanatory notes were available in minority languages, and that persons belonging to national minorities, including Roma, were trained and enlisted as census enumerators.

45. In 2010, the Personal Data Protection Agency was established in Montenegro as an independent monitoring mechanism in charge of supervision of personal data protection legislation and activities relating to personal data protection. Furthermore, the Advisory Committee is pleased to note that in July 2012, amendments to the Personal Data Protection Law were adopted, with a view of harmonising it with the European Union's standards.²

b) Outstanding issues

46. The Advisory Committee regrets that, according to the information provided by the representatives of national minorities, Minority Councils were not consulted at the planning stage of the census and had no opportunity to provide their insight on the questions of direct interest to persons belonging to national minorities and on the approaches to be used for collecting ethnic data.

47. Against a climate of tolerance and inclusiveness generally observed in Montenegro, it has to be noted that, in the period leading up to the census, there was a perceptible rise of tensions with protagonists of different ethnic identifications, most notably Montenegrins and Serbs, accusing each other of pressuring respondents to affiliate with a particular identity. Also, the Advisory Committee notes with regret that a number of billboards placed in the Kotor area,

¹ United Nations Economic Commission for Europe and the Statistical Office of the European Communities (EUROSTAT) Recommendations for 2010 Censuses of Population and Housing.

² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to processing of personal data and free movement of such data.

encouraging respondents to declare their Croat identity were vandalised with offensive symbols and inscriptions.

48. Finally and importantly, according to some representatives of national minorities, the census figures do not provide an accurate indication of the number of persons belonging to national minorities living in Montenegro. For example, according to estimates of some Croat minority representatives, the number of persons belonging to the Croat national minority could be considerably higher than the official figure, and the number of undeclared persons could be explained by intimidation and tensions in the period before and during the census. Given that the census figures pertaining to ethnicity tend to fluctuate, with the number of Roma more than doubling between 2003 and 2011, the Advisory Committee considers that the results of the census must be viewed with some caution. It therefore asks the authorities not to rely exclusively on the data collected during the census when planning and implementing its policy on national minorities.

Recommendations

49. The Advisory Committee asks the authorities to use cautiously the data collected during the census, and not to condition the exercise of any rights provided for in the Framework Convention exclusively on the results of the census of 2011. Policies affecting persons belonging to national minorities should be drafted taking into account evidence of real needs.

50. The Advisory Committee invites the authorities to consult persons belonging to national minorities on the formulation of the questions on ethnic affiliation and language spoken for future censuses.

Article 4 of the Framework Convention

Legal and institutional framework for combating discrimination

Findings of the first cycle

51. In its first Opinion, the Advisory Committee noted that some existing non-discrimination provisions referred only to citizens and that they did not cover all relevant areas. In this context the Advisory Committee considered that the authorities should take the opportunity of their ongoing work on non-discrimination legislation to review the situation regarding the personal scope of application of these provisions and ensure that all fields were covered.

52. The Advisory Committee also noted with concern that so far, the judicial system had not addressed problems of discrimination.

Present situation

a) Positive developments

53. The Advisory Committee notes with satisfaction that the existing hitherto constitutional general prohibition of discrimination “on any ground” and the Labour Law prohibition of discrimination in employment on the grounds of, *inter alia* nationality, race, gender, language and religion was further strengthened by the adoption in 2010 of the Law on the Prohibition of Discrimination.

54. The Advisory Committee welcomes that Article 2 of this Law prohibits any form of direct and indirect discrimination on a large number of non-exhaustive grounds, including race, colour of skin, national affiliation, social or ethnic origin, language and religion. Furthermore, Article 3 specifies that the Law protects both natural and legal persons and implies, without expressly stating it, prohibition of discrimination in both the public and private sphere. The Advisory Committee notes in particular the shifting of the burden of proof in cases of discrimination and the provision allowing non-profit public interest organisations to litigate on their own behalf when the rights of many are breached. The law provides two possible remedies to victims of discrimination, through courts and by way of applying to the Protector of Human Rights.

55. The Advisory Committee also notes that in 2011 the government established the Council for the Protection against Discrimination, overseen by the Prime Minister and composed of senior ministers and representatives of non-governmental organisations. The council's main tasks are to monitor and coordinate the activities of state authorities, state administration bodies and other institutions in applying the antidiscrimination mechanisms and measures, and to screen the applicable legislation in order to ensure compatibility with ratified international conventions on human rights and freedoms. The council also plays an important role in promoting antidiscrimination by making public statements and initiating information campaigns.

56. In addition to the above-mentioned measures, the Parliament of Montenegro adopted in 2011 the Law on Free Legal Aid, which established modalities for assistance to persons unable to afford legal advice, irrespective of whether they are citizens, foreign nationals or asylum seekers. According to the law, legal aid includes legal advice, drafting of documents, representation in proceedings before the court, before the Prosecutor's Office, the Constitutional Court, as well as in the procedure for out-of-court dispute settlements. Beneficiaries of free legal aid are defined, as a rule, on the basis of the financial situation of the applicant.

b) Outstanding issues

57. The Advisory Committee notes that the Law on the Prohibition of Discrimination, which has been the subject of a number of expert analyses at the drafting and post-adoption stages,³ does not fully comply with international standards. In particular, the Advisory Committee regrets to find that the definition of discrimination does not meet the criteria established by the EU Equality Directives, which Montenegro, as a candidate country⁴ should strive to meet. In particular, the law does not clearly set out that it prohibits discrimination in both the public and private sphere (as implied by subsequent provisions). Furthermore, while Article 3 specifies that the Law protects natural and legal persons, it does not state clearly that the originators of discrimination may be public authorities, as well as natural and legal persons.

³ See Opinion on the draft Law on Prohibition of Discrimination of Montenegro, CDL-AD(2009)045, Opinion no. 541/2009, of 12 October 2009, adopted by the Venice Commission at its 80th Plenary Session (9-10 October 2009) and Opinion on the draft Law on Prohibition of Discrimination of Montenegro, CDL-AD(2010)011, Opinion no. 564/2009 of 18 March 2010, adopted by the Venice Commission at its 82nd Plenary Session (12-13 March 2010), OSCE/ODIHR Opinion on the Law on the Prohibition of Discrimination of Montenegro of 27 March 2013, doc ref.: NDISCR -MNG/226/2013.

⁴ Following the entry into force of the Stabilisation and Association Agreement with the EU on 1 May 2010, Montenegro was officially granted candidate status for EU membership on 17 December 2010. Accession negotiations between the EU and Montenegro officially started on 29 June 2012.

58. Moreover, the law did not establish a specialised body dealing with discrimination cases (specifically racial and ethnic discrimination) capable of providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys concerning discrimination, and publishing independent reports, as required in Article 13 of the EU Racial Equality Directive. This task has been given to the Protector of Human Rights. In this context the Advisory Committee recalls that the OSCE/ODIHR and the Venice Commission have already raised some concerns with regard to the independence and the financial and human-resources related capacity of the Human Rights Protector to implement the law.⁵

Recommendations

59. The authorities should review the Law on the Prohibition of Discrimination with the view of making it fully compatible with international human rights standards and harmonise the definition of discrimination with European standards. A genuinely independent specialised body dealing with discrimination should further be established.

60. The authorities should carefully monitor the implementation of the Law on the Prohibition of Discrimination to ensure that the existing remedies open to victims of discrimination are known, available and effective.

Role of the Protector of Human Rights

Findings of the first cycle

61. In its first Opinion, the Advisory Committee noted that the Protector of Human Rights had a potentially important role in identifying and combating discrimination and considered that this institution should be more accessible to persons belonging to national minorities and be provided the means to operate effectively with all guarantees for the independence of its work.

Present situation

a) Positive developments

62. The Advisory Committee welcomes the adoption on 29 July 2011 of the new Law on the Protector of Human Rights which addresses a number of shortcomings identified earlier. In particular, strengthening of the financial independence of the Protector of Human Rights by way of enabling him to submit the proposal on the Office's budget is to be welcomed. The Advisory Committee is also pleased to learn that the Protector's Annual Report of Activities is submitted to and debated by the Parliament.

63. Notwithstanding the criticism above about the incompatibility of current enforcement arrangements under the Law on the Prohibition of Discrimination, the Advisory Committee welcomes the Protector's enhanced role as the national mechanism for the protection against discrimination. It is of particular importance that the law gives the Protector the right to initiate court proceedings in discrimination cases.

⁵ See the OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, of 19 October 2011, adopted by the Venice Commission at its 88th Plenary Session (14-15 October 2011), pars 17-18. The matter of the Human Rights Protector's independence was also raised in the 2012 EU Progress Report on Montenegro, p. 9: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf.

b) Outstanding issues

64. The Advisory Committee shares the views expressed by the Venice Commission that current legislative provisions on the appointment and dismissal of the Protector by simple majority in Parliament do not sufficiently guarantee his/her independence.⁶ In particular, the possibility of revoking the Protector by an unqualified majority of deputies makes his/her tenure of office very precarious.

65. The Advisory Committee has taken note of the small number of cases of discrimination which have been reported to the Protector of Human Rights.⁷ According to the Protector's own submission to the UN Universal Periodic Review, this is "a consequence of insufficient knowledge about human rights and protection mechanisms, as well as the present lack of readiness among citizens to report this incidence".⁸ The Advisory Committee considers further that the lack of trust on the part of the public in the effectiveness of remedies offered by the Protector may be another contributing factor explaining the insignificant number of lodged applications.

Recommendation

66. The Advisory Committee urges the authorities to provide the Protector of Human Rights with the appropriate financial resources to carry out a public awareness campaign on the new antidiscrimination legislation, in particular on the Protector's role as the national mechanism for the protection from discrimination.

The situation of the Roma and Egyptians

Findings of the first cycle

67. In its first Opinion, the Advisory Committee noted that the long-delayed Strategy for the Improvement of the Position of the Roma Population was finally endorsed by the government in 2007 and found it promising that the authorities had set up a financial structure which was to receive 0,2% of the state's annual budget for its implementation.

68. The Advisory Committee also found that the situation of Roma in a number of fields, notably in housing and education, was not in line with the principles contained in Article 4 of the Framework Convention and called on the authorities to use the strategy to fill in the gaps identified in the Decade Action Plan, including by introducing the gender equality dimension in measures targeting the Roma in all fields, and especially in education.

69. Finally, the Advisory Committee noted with deep concern that a large percentage of IDPs living on the territory of Montenegro did not possess personal identity documents and asked the authorities to redouble their efforts in this regard.

⁶ Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) CDL-AD(2011)034.

⁷ In the period 2003-2010 there were 30 such cases.

⁸ Protector of Human Rights Report on Human Rights Situation for the 15th Session of the Universal Periodic Review (UPR) http://www.ombudsman.co.me/docs/izvjestaji/2012_UPR_individual_submission.pdf.

*Present situation**a) Positive developments*

70. The Advisory Committee notes with satisfaction that following the adoption in 2007 of the Strategy for the Improvement of the Position of the Roma Population, and the establishment of the committee to monitor the implementation of this strategy, the authorities allocated in the years 2008-2011 1.7 million Euro to finance 65 projects in the identified priority areas of education, employment, health-care, culture and resolution of the legal status of the Roma and Egyptians.

71. The Advisory Committee further notes that the authorities adopted in April 2012 a new Strategy to Improve the Position of Roma and Egyptians in Montenegro for the years 2012-2016, and an Action Plan for the implementation of the strategy which was also adopted in 2012. The strategic goal set by this document is the improvement and enhancement of the status of Roma and Egyptians in Montenegrin society, which should lead to a reduction in the differences that exist between them and the rest of the population, in particular as regards access to education, employment, health services, and the right to housing and basic living conditions. It is commendable that the authorities allocated 473 000 Euros to the budget for its implementation.

72. The Advisory Committee welcomes recent decisions to resolve the status of refugees and IDPs in a durable and sustainable manner. Measures adopted by the authorities following the devastating fire at the Konik Camp in July 2011, are welcome. The Advisory Committee notes that the aim of the strategy for the permanent resolution of the status of refugees and internally displaced persons in Montenegro, with special reference to the Konik area is to provide two possible solutions: local integration or voluntary return while respecting the personal choice of the displaced persons.

b) Outstanding issues

73. Whilst welcoming the efforts made by the government over the past few years to seek solutions to the continuing marginalisation of Roma and Egyptians, the Advisory Committee is still deeply concerned about the continued existence of the Konik Camp, where over 2 000 IDPs, mainly Roma from Kosovo*, have been living for over a decade in most deplorable conditions, without electricity, running water and sanitation facilities. That situation suggests insufficient will on the part of the authorities to resolve the issue. It is particularly disturbing that the authorities tolerate the existence of a ramshackle camp located in the immediate vicinity of the capital, on the site of a garbage dump, away from other residential areas and communities.

74. The Advisory Committee commends that the deadline for regularising the IDPs' status has been repeatedly extended, and that out of an estimated 16 000 IDPs in Montenegro over 9 500 persons are undergoing the regularisation procedure. Several hundred Roma IDPs have received support from the authorities (including organised transportation and financial support) to obtain identity documents. Regrettably, in spite of these initiatives, a significant number of them still cannot regularise their status because of the lack of the necessary documents such as birth certificates.

75. Moreover, the Advisory Committee regrets to note that, according to Roma representatives, the Roma National Council was not involved in the drafting of the 2012-2016 Strategy to Improve the Position of Roma and Egyptians in Montenegro. The failure to involve Roma representatives in the consultation and decision-making process justifies doubts about the long-term effects of the projects.

Recommendations

76. The authorities are encouraged to step up their efforts to ensure the effective implementation of the Strategy to Improve the Position of Roma and Egyptians and the Action Plan adopted by the government, in particular by closely consulting representatives of these communities.

77. The authorities should redouble their efforts to find durable solutions enabling them to close down the Konik Camp and to provide for adequate integration or return opportunities for the camp's inhabitants.

Article 5 of the Framework Convention

Preservation of culture of persons belonging to national minorities

Findings of the first cycle

78. In its first Opinion, the Advisory Committee considered that the mechanism for providing state support to the cultures of national minorities was not satisfactory and encouraged the authorities to review, in consultation with Minority Councils, the situation in order to make state support mechanisms more efficient and transparent.

Present situation

a) Positive developments

79. The Advisory Committee is pleased to note that the authorities continue to provide various forms of assistance to persons belonging to national minorities, such as support for cultural centres, libraries, music and drama festivals, art exhibitions, amateur cultural productions and other artistic events. The Law on Monuments and the Law on Culture, both adopted in 2008, established standards for the protection and the promotion of culture based on the freedom of expression and respect for cultural rights, with equal preservation of all cultural identities and respect for cultural diversity. The Law on Culture further established the obligation of the state to create the conditions for a steady and equal development of culture in the whole territory of Montenegro, as well as for the preservation of original and traditional cultural and ethno-cultural characteristics.

80. Furthermore, the Advisory Committee learns with interest about the establishment of the National Programme for the Culture Development in 2011-2015, which includes goals and priorities for the development of culture in Montenegro as a "multi-national, multi-cultural and multi-religious country". Moreover, an independent National Council for Culture, representing professional artists of Montenegro was established in 2010 to monitor the sector and to propose measures for its further development.

81. The Advisory Committee is also pleased to note that in 2009, the authorities initiated a programme for the revitalisation of culture in the north of Montenegro, covering the municipalities of Kolasin, Mojkovac, Pljevlja, Zabljak, Bijelo Polje, Berane, Plav, Andrijevica, Rožaje, Plužine and Šavnik, which is of particular interest for persons belonging to national minorities. The programme consists of reconstruction and rehabilitation of cultural facilities, purchasing of technical equipment for the implementation of cultural programmes and projects, and production of cultural and artistic programmes.

82. The National Theatre of Montenegro is obliged, under the Law on Theatre, to perform plays drawing from the cultural heritage of Montenegro as part of its repertoire, including the cultural heritage of national minorities.

83. It is with particular interest that the Advisory Committee welcomes the establishment in 2009 of the Centre for the Preservation and Development of Minority Cultures, which aim to promote minority rights in the area of culture and to affirm multiculturalism as one of the founding principles of the state of Montenegro. The centre actively engages in promoting minority cultures by organising various events, workshops, and by publishing literary and other works in languages of national minorities.

84. Further financial resources are provided for cultural activities and projects aimed at preserving national minority cultures by the Ministry of Culture. In this context, the Advisory Committee learned with interest from the State Report about the rehabilitation of the Mosque in Starodoganja, reconstruction of the roof of the St. Petra Church in Ljuta and the contribution to the restoration of the sacred complex of St. Eustatius in Dobrota.

b) Outstanding issues

85. Although the state undertakes to support minority cultural events, various interlocutors have underlined to the Advisory Committee that public financial support for national minorities' activities is still limited and insufficient to guarantee the preservation and development of these cultures. The Advisory Committee notes that, according to representatives of national minorities, they are not adequately involved in the decision-making processes on the allocation of funds for cultural projects. The six representatives of the Minority Councils sitting in the 17-member governing board of the Fund for Minorities are not in a position to influence the attribution of available funds (see related comment under Article 15).

86. According to information provided by representatives of the Croat minority, no progress has been achieved with the pledged restoration of the Croat Cultural Centre ("Croat Home") in Kotor. Furthermore, no Croat minority representative was invited to take part in the exhibition promoting the Kotor Bay in Venice, in spite of the fact that the area is inhabited by many persons belonging to that minority.

Recommendations

87. The Advisory Committee invites the Montenegrin authorities to maintain their support for cultural projects aiming to preserve and develop cultures of national minorities and to ensure that financial difficulties will not affect disproportionately persons belonging to national minorities.

88. The authorities are invited to ensure that national minority representatives are involved at all stages of implementation of minority cultural projects, in particular in the decisions on the allocation of funds for such projects.

Article 6 of the Framework Convention

Tolerance and intercultural dialogue

Findings of the first cycle

89. In its first Opinion, the Advisory Committee noted with satisfaction that Montenegro had, on the whole, managed to maintain good interethnic relations and tolerance amongst the different segments of its population. The Advisory Committee was however of the opinion that the authorities should pay due consideration to measures promoting interaction between the different ethnic groups of Montenegro, especially in the fields of education, culture and the media.

90. Also, the Advisory Committee welcomed the willingness on the part of the Public Radio and Television of Montenegro (RTCG) to improve diversity in reporting and called on the authorities to ensure that resources were made available to public service media to reflect more widely on national minority culture in its programmes. It also urged the authorities to make resources available for translation of minority language programmes into the official language in order to increase the availability of information on national minorities to the general public in the mainstream media.

Present situation

a) Positive developments

91. The Advisory Committee is pleased to note that a climate of tolerance and dialogue generally prevails in Montenegro, including in the ethnically mixed municipalities. It notes that this climate is generally marked by a spirit of mutual respect and understanding, on which minority representatives themselves comment favourably. To increase inter-cultural awareness among young people, the school subject "civic education", promoting these values and competences, has been included in the curricula at primary and secondary levels. It is particularly worth noting in this context that the Law on High School itself prescribes that education in high schools should provide students with necessary knowledge, skills, capabilities and habits for the purpose of developing social competence for life in a pluralistic and democratic society and for the fostering of understanding, tolerance and solidarity.

92. The Declaration on the acceptance of the European Parliament Resolution on Srebrenica adopted by the Parliament in July 2009 contributed to enhance the climate of tolerance and interethnic dialogue. A park in the centre of Podgorica was renamed a "Memorial Park to Civilian Victims of War 1991 -2001", and a monument for "Civilian victims of the wars in former Yugoslavia 1991-2001 - Never again" was unveiled by the Prime Minister.

93. In 2008, Montenegro ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and a number of laws, including the Law on Monuments and the Law on Culture were adopted (see comments under Article 5 above). The Ministry of Culture supports cultural and artistic activities implemented primarily by civil society organisations. Moreover, since 2010, Montenegro has been actively participating in the EU

Culture programme 2007 - 2013 which serves as a platform of co-operation aiming to promote the cross-border mobility of cultural operators to encourage the circulation of cultural and artistic expressions and to foster intercultural dialogue.

94. Since its creation, the Centre for the Preservation and Development of Minority Cultures has been taking a leading role in promoting cultural diversity and intercultural dialogue in Montenegro. For example in 2012 it organised "Days of Minority Culture" which were held over three weeks in nine towns (Podgorica, Tuzi, Bar, Tivat, Kotor, Ulcinj, Petnjica, Bar and Plav) bringing together cultural societies, soloists and vocal-instrumental ensembles. Various performances were attended by nearly 2 500 people.

95. In 2011, to mark the International Roma Day, the centre published in Romani and Montenegrin languages a collection of short stories by a Montenegrin Roma writer.

b) Outstanding issues

96. Notwithstanding this generally positive background, the Advisory Committee notes persistent negative stereotypes and prejudices against persons belonging to the Roma communities, in particular the IDPs from Kosovo*. The fact, that a significant number of the IDPs have been effectively marginalised in the Konik Camp does not help in any way either to resolve the issue of IDPs itself or to combat the negative public perception of the Roma.

97. The Advisory Committee was informed by some representatives of the national minorities that, while acknowledging the positive climate of tolerance and dialogue which prevails in Montenegro, there remained a lack of public awareness of national minorities' identities and religions, cultural and social customs and traditions. Although progress has been achieved in this area, for example through changes to textbooks to make them more culturally diverse, and increased reporting on national minority issues in the media, more efforts are required to make all segments of society aware and appreciative of the cultural diversity of the country.

Recommendation

98. The Advisory Committee invites the authorities to continue to promote intercultural dialogue, mutual understanding and respect, as well as to combat prejudice towards persons belonging to national minorities and IDPs living on the territory of the country. The authorities should continue their efforts, particularly through education and the media, to inform the public about the history and culture of minorities, emphasising the contribution they bring to society.

Police action and respect for human rights

Findings of the first cycle

99. In its first Opinion, the Advisory Committee noted the setting up of the Council for Civil Control of Police Work (CCCPW) and asked the authorities to provide it with the necessary resources needed to act promptly and independently on allegations of ill-treatment of persons belonging to national minorities by law enforcement officials.

100. The Advisory Committee also noted that the authorities have taken steps to recruit Roma as police officers and encouraged them to continue to recruit persons belonging to national

minorities into the ranks of the police and to pay particular attention to their continued employment.

Present situation

a) Positive developments

101. The Advisory Committee welcomes the initiatives taken by the Protector of Human Rights since 2008 to increase the enrolment of persons belonging to national minorities into the Police Academy with the view of respecting the constitutional provision on the right to proportional representation in public services.

b) Outstanding issues

102. The Advisory Committee notes the concerns of some representatives of the Albanian national minority voiced with regard to the impartiality of the acquittal of five special police antiterrorism unit officers in 2011. They had been accused of mistreating ethnic Albanians from the municipality of Malesija, at the moment of their arrest for plotting terrorist attacks. The latter were eventually convicted for these charges in August 2008. Notwithstanding the veracity of the charges against the arrested individuals, the Advisory Committee recalls in this context that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated that the authorities should take steps to investigate the complaints of ill-treatment by the police to avoid any perception of impunity.⁹

103. The Advisory Committee notes that the Council for Civil Control of Police Work (CCCPW) has considered over 400 complaints since its establishment in 2007. It found the complaints justified in approximately 35% of the cases and made recommendations for action to the Office of Internal Police Control or the state prosecutor as regards lack of respect of professional standards and lack of respect for human rights by the police. The Advisory Committee notes in this context that until recently the CCCPW acted primarily on the basis of complaints, the number of which was limited by the practice of filing counter-charges by the police against individuals who reported police abuse. Furthermore, the Advisory Committee notes that, according to available information, the impact of the council's recommendations remains limited due to their non-binding nature, lack of co-ordination on the part of the different supervisory bodies and insufficient follow-up.¹⁰

Recommendations

104. The authorities should continue and extend their measures to raise awareness among members of the police force regarding respect for diversity and human and minority rights.

105. The authorities should strengthen supervisory mechanisms to monitor police behaviour, in order to make them, in line with European standards, more effective and independent. Alleged cases of human rights violations by the police must be appropriately investigated and sanctioned, when established.

⁹ See Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), doc.ref.: CPT/Inf (2010) 3, pg. 20-23.

¹⁰ See OSCE Report «Police Reform in Montenegro 2006-2011: Assessment and Recommendations», pg. 78. Podgorica 2012 <http://www.osce.org/montenegro/97001>.

Article 8 of the Framework Convention

The right to manifest religion or belief

Findings of the first cycle

106. In its first Opinion, the Advisory Committee noted that the dialogue between the authorities and the religious communities was reportedly unsatisfactory and considered that the authorities should review the situation and make the necessary changes, including institutional changes, in order to step up this dialogue.

107. The Advisory Committee also found that a lack of designated premises to practice Islam had been reported at the local level and considered that the authorities should take steps in consultation with the religious communities concerned, to find a solution to this problem.

Present situation

a) Positive developments

108. The Advisory Committee notes that the authorities respect the right to freedom of thought, conscience and religion of persons belonging to national minorities. Whereas the state institutions shut down during Christian Orthodox holidays, the Muslim, Catholic, and Jewish employees receive time off during their respective holidays, within the limit of six days per year.

109. In 2011, the government and the Holy See signed a Fundamental Agreement that regulates and defines the status of the Roman-Catholic Church in Montenegro. The Advisory Committee also notes that in 2012, representatives of the Islamic Community and of the Jewish Community signed similar agreements with the authorities on mutual relations. It is noted further that the municipality of Podgorica donated land to the Jewish minority to build the first synagogue in Montenegro. It is noted with satisfaction in this context that there have been no reports of anti-Semitic incidents in Montenegro, and that there is a general climate of interreligious dialogue and understanding.

b) Outstanding issues

110. No significant progress has been achieved as regards the restitution of property confiscated under the former communist regime. The Advisory Committee further notes that the Montenegrin Orthodox Church, the Serbian Orthodox Church, the Roman-Catholic Church and the Islamic Community have all outstanding claims on property in various locations in the country, while the Jewish community from Serbia asked for the restitution of a rehabilitation centre for women in Prcanj, in the municipality of Kotor. The Advisory Committee considers that the process of the restitution of religious property should proceed swiftly and without discrimination.

Recommendation

111. The Advisory Committee invites the authorities to proceed with the restitution of property to religious communities.

Article 9 of the Framework Convention

Access to the media for persons belonging to national minorities

Findings of the first cycle

112. In its first Opinion, the Advisory Committee noted that broadcasting of national minority programmes was considered insufficient at the local level and considered that the authorities should review the situation in order to develop further programming in minority languages at the local level.

113. The Advisory Committee also found a lack of domestically-produced programmes targeting national minorities other than the Albanian minority and considered that journalists from national minorities should be involved to a greater extent in the production of education, cultural and other mainstream programmes.

a) Positive developments

114. The Advisory Committee notes that the Law on Electronic Media was adopted in 2010 replacing the Law on Broadcasting of 2002. The new law obliges public broadcasters to produce and broadcast programmes expressing the cultural identity of all segments of society, including national minorities, and to produce and broadcast programmes in languages of national minorities in the areas inhabited by such groups. Furthermore, the law proscribes that the state budget and that of local self-governments shall provide funds for the production and broadcasting of these programmes. With regard to commercial broadcasters, the law stipulates that part of the revenue from state lotteries shall be allocated to support “programmes important for national minorities”.

115. The Advisory Committee notes that public television and radio continue to broadcast programmes addressed to persons belonging to national minorities, including in their languages. The state television broadcasting company produces daily 10-minute information programmes and weekly 45-minute long programmes in the Albanian language. The Advisory Committee welcomes the subtitling in the Montenegrin language of the daily news programme in the Albanian language.

116. As regards the public radio, the Advisory Committee commends the information provided in the State Report on the daily 30-minute long broadcasts in Albanian and Romani.

117. The state Television Broadcasting Company, in co-operation with the Centre for the Preservation and Development of Minority Cultures, produces also a weekly 30-minute cultural programme “Mostovi” (“Bridges”) dedicated to art and cultures of national minorities in Montenegro. The Advisory Committee notes with satisfaction that once a month this programme is broadcast in Romani.

118. The printed media of national minorities in Albanian, Bosnian, Croatian and Serbian languages continue to be published with the support of the Fund for Minorities. It is also noteworthy that the magazine “Alav”, written in standardised Romani and produced by Roma journalists started is in print since 2012, and was the first such paper in Montenegro.

119. A local Croat radio-station and a local newspaper in Kotor in the Croatian language have been established with the financial help of Croatia.

b) Outstanding issues

120. The Advisory Committee notes that in spite of the above-mentioned positive developments, representatives of national minorities continue to raise concerns about the territorial coverage of programmes produced in languages of national minorities. In addition, recent cuts in the funding of the public TV and radio programmes had a negative effect on the number of journalists employed to produce programmes for national minorities.

121. Representatives of national minorities also informed the Advisory Committee about the lack of interest of mainstream media in national minority issues and in particular in the work of the National Minority Councils, which impacts negatively on the perception of their mandate and work in society.

Recommendations

122. The Advisory Committee encourages the authorities to continue supporting radio and television broadcasting in the languages of the national minorities.

123. The authorities are invited to increase their efforts to ensure access of persons belonging to national minorities to the radio and television programmes produced for them, and in particular to take the necessary measures to provide adequate radio and television coverage of the regions where national minorities live.

124. Furthermore, the authorities should ensure that public TV and radio stations mainstream the interests of minorities into their regular programming and confirm their commitment to pluralism and independence also through active recruitment and continued employment of journalists belonging to national minorities.

Article 10 of the Framework Convention

Use of minority languages in communication with and by public authorities

Findings of the first cycle

125. In its first Opinion, the Advisory Committee noted the need for further legal clarity on the modalities for implementation of the right of persons belonging to national minorities to use their languages in relations with administrative authorities and asked that the authorities inform persons belonging to national minorities of their rights and make the necessary resources available.

Present situation

a) Positive developments

126. The Advisory Committee recalls that Article 13 of the Constitution proclaims that the Montenegrin language shall be the official language with both Cyrillic and Latin scripts being equal, but also recognises Serbian, Bosnian, Albanian and Croatian languages as being in official use. The statutes of Podgorica, Tuzi, Ulcinj and Plav, which are the municipalities where persons belonging to national minorities constitute the majority of the local population, define the use of

languages and alphabets. The Advisory Committee was informed by the local authorities in Plav and Tuzi about the measures taken in order to apply the statutory provisions in practice.

127. The Advisory Committee notes that, according to available information, the right to use minority languages in court is respected in practice. In municipalities with a high number of minority language speakers the judges would also include minority language speakers. For example, in Ulcinj, out of six judges, five are Albanian language speakers. Also, in accordance with the Law on Courts the cost of employing 36 Albanian-speaking court interpreters is borne by the state.

b) Outstanding issues

128. The Advisory Committee notes that there have been no changes to the legislative provisions on the modalities for implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities. The provision of the Law on Minority Rights on the right to use minority languages “in the local self-government units in which persons belonging to national minorities constitute a majority or a considerable part of the population according to the last census” remains the legal basis for such practice. The Advisory Committee considers that this provision lacks necessary clarity and should be amended.

Recommendations

129. The Advisory Committee invites the authorities to consider amending legislative provisions on the use of minority languages in communication with public authorities and by public authorities, in order to ensure legal clarity on the modalities for implementation.

130. The authorities are also invited to ensure that the right to use a minority language and alphabet in relations with administrative authorities is respected in all units of local self-government where the Law on Minority Rights applies.

Article 11 of the Framework Convention

Use of minority languages for personal names

Findings of the first cycle

131. In its first Opinion, the Advisory Committee noted reluctance by the competent authorities to rectify the spelling of personal names belonging to the Albanian national minority that had been altered upon registration and considered that the authorities should ensure that, while completing the Law on Civil Registers, the procedure to revert to the original names be followed in practice without any unnecessary complications and no additional costs for those concerned.

Present situation

a) Positive developments

132. The Advisory Committee welcomes the adoption in July 2008 of the Law on Personal Names, which entitles applicants, upon request, to have personal names entered into record books or registries in one of the languages in official use in Montenegro, namely Albanian,

Bosnian, Croatian, Montenegrin or Serbian languages. Furthermore, the Advisory Committee notes that, in conformity with the Law on Identity Card, applicants may request that data in identity documents be entered in one of the languages in official use in Montenegro. Finally, the Law on Record Books entitles applicants to receive certified copies from the record books in the language of the minority to which the applicant declares to belong to.

133. The Advisory Committee welcomes the information contained in the State Report according to which more than 26 000 persons availed themselves in the years 2008-2011 of the possibility to have identity documents issued to them in one of the minority languages in official use in Montenegro, namely Albanian, Bosnian, Croatian or Serbian languages.

b) Outstanding issues

134. The Advisory Committee notes that the time limit set for persons wishing to change their names in accordance with the Law on Personal Names will expire in August 2013. It also regrets that the list of minority languages in which data could be entered into identity documents does not include Romani.

Recommendation

135. The authorities should consider the possibility of extending the deadline in order to create conditions for all interested applicants, including the Roma, to avail themselves of the possibilities created by the Law on Personal Names of 2008, and raise the awareness about such possibilities.

Use of minority languages for local place names

Findings of the first cycle

136. In its first Opinion, the Advisory Committee noted that the implementation of the right to display topographical indications in minority languages remained limited to a few areas in which persons belonging to national minorities constitute the majority or a considerable part of the population. The Advisory Committee asked the authorities in this context to ascertain whether there is a demand by persons belonging to national minorities for such signs and take appropriate measures to encourage a more extensive application of this right by the local authorities.

Present situation

a) Positive developments

137. The Advisory Committee notes that this right is respected in practice in areas where persons belonging to national minorities constitute a considerable part of the population, for example in Plav, Tuzi and Ulcinj.

b) Outstanding issues

138. The Advisory Committee notes that there have been no changes to the legislative provisions on the modalities for implementation of the right to display topographical indications in minority languages. The provision of the Law on Minority Rights concerning the display of

topographical indications of streets, squares and municipalities in minority languages remains the legal basis for such practice.¹¹

Recommendation

139. The Advisory Committee reiterates its call on the authorities to ascertain whether there is a demand by persons belonging to national minorities for topographical indications in minority languages and take appropriate measures to encourage a more extensive application of this right by the local authorities.

Article 12 of the Framework Convention

Multicultural and intercultural education

Findings of the first cycle

140. In its first Opinion, the Advisory Committee noted that the possibility for local schools to devote 20% of the curriculum to the needs and interests of persons belonging to national minorities had been rarely used in practice. In this context, the Advisory Committee called on the authorities to promote the use of this provision by the local authorities in order to integrate the culture, history and language of national minorities more effectively in the school curricula.

141. In addition, the Advisory Committee asked the authorities to continue their efforts to revise textbooks and to address teacher training needs of persons belonging to national minorities.

Present situation

a) Positive developments

142. The Advisory Committee welcomes the introduction of new curricula in the field of language and literature, in particular the inclusion of elements of Serbian, Bosnian and Croatian language and literature in the language courses at the primary and secondary level. In addition the Advisory Committee notes with interest the introduction of the “Civic education” subject promoting human rights, democracy and multicultural society as a compulsory subject for all children at the primary-school level and as elective subject at the secondary-school level.

143. The Bureau for Education Services developed a wide range of training programmes for teachers including intercultural education at primary and secondary schools, integration of Roma children in elementary schools, culture of human rights, teaching of history of religions at primary and secondary schools.

b) Outstanding issues

144. While acknowledging the efforts made to promote tolerance and interethnic understanding, the Advisory Committee notes that according to various interlocutors the possibility for local schools to devote 20% of the curriculum to the needs and interests of persons belonging to national minorities continues to be rarely used.

¹¹ See Article 11 of the Law on National Minorities.

145. The Advisory Committee notes further that, according to representatives of the Albanian minority the quality of translation of some textbooks from the Montenegrin into Albanian language is very poor and that lack of textbooks for some subjects hampers knowledge acquisition altogether. It was also pointed out that some textbooks, which should reflect the Albanian culture, such as the song-book for music class at the primary school level, is a poor translation of Montenegrin songs and does not reflect Albanian culture adequately.

Recommendations

146. The authorities should step up their efforts to ensure that good quality textbooks and manuals are available for all subjects taught in minority languages at all levels of education. Particular attention should be paid to the quality of translations of the textbooks.

147. The Advisory Committee invites the authorities to encourage schools to consistently use the possibility offered in the general curriculum of reflecting the identity and culture of persons belonging to national minorities.

Situation of the Roma and Egyptians

Findings of the first cycle

148. In its first Opinion, the Advisory Committee noted that the specific problems encountered by the Roma had been addressed mostly in an ad hoc way with no sustainable funding available. In particular, the Advisory Committee asked the authorities to collect data on school attendance at all levels and recommended that particular attention be paid to the enrolment of Roma children in pre-school education, with adequate language support.

149. Furthermore, the Advisory Committee voiced its strong concern with the existence of classes which are entirely composed of Roma pupils, in particular in areas with a concentration of displaced persons from Kosovo* and called for more determined action by the authorities in order to bring the situation in line with Article 12 and the principles of Article 6 on the promotion of intercultural dialogue.

Present situation

a) Positive developments

150. The Advisory Committee notes with satisfaction that the number of Roma children attending school has been increasing steadily during the last decade. Whereas in the school year 2001/2002 there were 536 Roma children attending primary education, in the academic year 2012/2013, the number of Roma children in primary schools was 1 745. Notably, although the number of Roma children in high schools has been increasing too, the fact that only 78 Roma children continue their education past the primary level demonstrates that there is still an urgent need for sustained efforts in this regard.

151. The Advisory Committee welcomes the initiatives undertaken by the Ministry of Human and Minority Rights together with the Ministry of Education and the Roma Minority Council, to assist Roma students in the education process. These include special scholarships, dormitories, transportation and tuition support for Roma children attending secondary and tertiary education, as well as financing of Roma educational assistants and special measures entitling Roma students

to enrol at the Podgorica University regardless of grades. In this context the Advisory Committee notes that there are 10 Roma students currently enrolled at the university.

152. Roma NGOs are actively involved through awareness raising campaigns such as “Yes to traditions, no to Traditionalism” in combating early drop-outs of Roma children from school, begging and early/forced marriages. They recognise, however, that greater involvement on the part of the law enforcement agencies and more gender-sensitive policies within the Roma strategy are required to combat these phenomena.

153. The Advisory Committee welcomes the information provided by Roma representatives that 300 Roma children are enrolled at a pre-school education establishment in a bilingual setting, allowing them to learn the Montenegrin language before the start of primary education.

154. The Advisory Committee commends the information contained in the State Report on the "Second Chance" Project implemented in 2007 and 2008 in Podgorica and Niksic, the aim of which was to train 61 illiterate adult Roma (40% women) and provide them with basic literacy and professional skills, thus increasing their chances of employment. The Advisory Committee further notes that, according to the same source, about 50% of the graduates found paid employment in various sectors of the Montenegrin economy.

b) Outstanding issues

155. Whilst welcoming the above measures, the Advisory Committee observes that a number of serious challenges remain and require sustained efforts on the part of the authorities. There are still some estimated 400 Roma children, mostly internally displaced, who on account of the lack of identity documents cannot attend school. The Advisory Committee has repeatedly underlined that the absence of identity documents or citizenship is not to bar the access of children to basic education.¹² Furthermore, the Roma educational assistants, whose number is recognised by the Ministry of Education to be insufficient to meet the needs, do not have a clearly defined legal status and are employed on temporary contracts, which makes their position precarious.

156. The drop-out rate of Roma children remains significantly higher than the average and the number of Roma children continuing education past primary education is unacceptably low. In particular this affects Roma women, half of whom, according to Roma NGOs, between the ages of 15 and 24 are illiterate.

157. The primary school located in the vicinity of the Konik Camp remains de facto a segregated school, as the only children attending it belong to Roma and Egyptian communities and only Albanian and Romani languages are spoken. Also, the kinder-garden at the Konik Camp does not teach children the Montenegrin language, thus not preparing them for primary school.

Recommendations

158. The Advisory Committee urges the authorities to increase their efforts to tackle the difficulties facing Roma pupils in the education system at all levels and to offer additional support for programmes in this regard. The Roma Minority Council should be involved

¹² See Advisory Committee Commentary on Education under the Framework Convention for the Protection of National Minorities, pg. 33.

effectively at all stages in education programmes, including their design, monitoring and evaluation.

159. The authorities should take measures to address urgently the outstanding matter of the Roma children not able to attend school due to the lack of identity documents.

160. The Advisory Committee urges the authorities, as a matter of priority, to make more sustained efforts to ensure access to pre-school facilities for all Roma children and to guarantee that the curriculum in pre-school education corresponds to the diverse needs and multi-lingual composition of the groups involved.

Article 13 of the Framework Convention

Private education establishments

Findings of the first cycle

161. In its first Opinion, the Advisory Committee noted the establishment of the Albanian high school in Ulcinj.

Present situation

162. The Law on Minority Rights expressly recognises the right of persons belonging to national minorities to establish private educational institutions. The Advisory Committee notes that the private Albanian “Drita” high school established in 2006 in Ulcinj, having had its curriculum approved by the Council for Vocational Education, has now been officially recognised and licensed by the Ministry of Education. Another private Islamic school in Malesija, teaching in Bosnian and Albanian languages, established in 2008, according to the available information, is currently awaiting official recognition.

Recommendation

163. The Advisory Committee invites the authorities to proceed with the process of recognition of minority educational establishments without undue delay.

Article 14 of the Framework Convention

The right to learn the minority language

Findings of the first cycle

164. In its first Opinion, the Advisory Committee took note of the reluctance to introduce minority language education in those areas where national minorities constitute less than the majority of the population and considered that greater clarity was needed for the implementation of minority language teaching provisions.

165. The Advisory Committee also found that the teaching of Croatian, Bosnian and other minority languages was inadequate to meet the demand and that teaching in these languages, when it existed, was not integrated in the regular school curriculum.

166. Furthermore, the Advisory Committee noted that the language needs of the Roma had received little attention and asked the authorities to provide adequate support to the implementation of the education provisions of the Roma strategy, including as regards the learning of Romani.

Present situation

a) Positive developments

167. The Advisory Committee notes that teaching in the Albanian language is organised at the primary and secondary level in the municipalities where persons belonging to the Albanian minority “constitute a majority or a considerable part of the population”. There are 12 public primary schools with Albanian language of instruction in the municipalities of Ulcinj, Tuzi, Rožaje, Plav and Bar which are attended by 3 472 children. Moreover, there are three public secondary schools with Albanian language of instruction in the municipalities of Ulcinj, Tuzi and Plav which are attended by 1 343 children.

168. The authorities are also endeavouring to improve the accessibility of textbooks in minority languages. The Advisory Committee notes that at the primary school level textbooks required for subjects taught in the Albanian language have either been written in Albanian or translated from Montenegrin into Albanian. Textbooks produced in Albania have also been used, provided they meet the curricula requirements.

169. The University in Podgorica is offering a teacher training course for Albanian language teachers. The Advisory Committee notes that there are currently 84 students attending the course and that another 39 persons have already graduated with required qualifications as teachers.

b) Outstanding issues

170. The Advisory Committee notes that, notwithstanding the existence of some primary schools offering tuition, in particular at the primary school level in the Albanian language, the continuing lack of clarity as regards the legal requirements for opening of minority language schools or classes hampers the development of minority language teaching in Montenegro. Shortcomings continue to exist in particular at the secondary school level in respect of the number of schools teaching in the Albanian language and the availability of teaching materials. The Advisory Committee notes with concern that children belonging to the Albanian minority in Rožaje and Bar cannot continue their education in the Albanian language beyond primary school, as there are no high schools there offering education in that language. The continuity of education in minority languages throughout the educational system is important, both as a recognition of their contribution to society and as a guarantee for the maintenance of the concerned languages and cultures.¹³

171. The Advisory Committee notes that there are no classes taught in the Romani language. However, it notes with interest the on-going regional initiative to codify the Romani language spoken in the region.

¹³ See Advisory Committee Commentary on Education under the Framework Convention for the Protection of National Minorities, pg. 27.

172. The Advisory Committee notes that teaching of the Croatian language in Tivat and Kotor is possible only because of financial assistance offered by Croatia.

Recommendation

173. The Advisory Committee calls upon the authorities to intensify their dialogue with the representatives of national minorities, to analyse the existing demands, including from the numerically smaller groups such as the Croat and Roma minorities to receive instruction in or of their minority languages.

Article 15 of the Framework Convention

**Effective participation of persons belonging to minorities
in social life and in public affairs**

Findings of the first cycle

174. In its first Opinion, the Advisory Committee noted the constitutional provision on the right to proportional representation of persons belonging to national minorities in the public services and considered that the authorities should develop the conditions for the implementation of this right, including by collecting data on the current level of representation of national minorities, setting targets and monitoring the progress made.

Present situation

a) Positive developments

175. The Advisory Committee has learnt that electoral legislation was amended in 2011¹⁴ and in 2012¹⁵ to create more favourable conditions for the election of national minority deputies. Specifically, Articles 36, 43 and 94 of the Law were amended substituting the rules applying in practice only to the Albanian community by the provisions applicable to “minority people or minority community”. The amended Article 94 of the Electoral Law eliminates the 3% threshold required of a minority party to enter the parliament, allowing pooling of votes on a collective list, provided that each individual minority party wins at least 0,7% of the votes. In addition, a particular rule has been introduced for the Croat minority, which is numerically smaller than other minorities. Should all election lists of the Croat minority parties fail to reach 0,7% of the votes, the most successful one will be awarded one parliamentary deputy mandate, provided it reaches 0,35% of the votes. As a consequence, these provisions result in practice in a good representation of persons belonging to national minorities in the Parliament of Montenegro.

176. In the last parliamentary elections, out of 81 deputies, 25 identified themselves with Albanian, Bosnian, Croat or Muslim national minorities. These figures indicate a higher proportion of the representatives of Albanian, Bosnian, Croat or Muslim national minorities than the proportion of these national minorities within the Montenegrin society. The Advisory Committee notes further that persons belonging to national minorities are also represented at the highest levels of executive power. Currently, one Deputy Prime Minister and three ministers identify themselves as persons belonging to national minorities.

¹⁴ Law on Amendments and Addenda to the Law on Election of Representatives and Deputies of 12 September 2011.

¹⁵ Law on Election of Councillors and Members of Parliament of 8 September 2012.

177. The Ministry of Human and Minority Rights in co-operation with the Human Resources Management Agency has been collecting information, provided by respondents on a voluntary basis, on the nationality of persons belonging to national minorities in the public services. The Advisory Committee notes that the accumulated data points to an increase in the number of persons belonging to national minorities occupying positions in public services. However, due to incompleteness of such data, coupled with the refusal of 8% of respondents to answer questions on nationality, no definitive conclusions can be drawn at this stage.

178. At the municipal level, in particular where persons belonging to national minorities constitute the majority, they participate actively in local public affairs. In Plav and Tuzi, the municipalities visited by the Advisory Committee, mayors, school principals and heads of police belong to national minorities, as do the majority of municipal councillors. However, it has to be noted that competencies of municipalities are quite narrowly defined and local authorities are not in a position to decide on the appointments of school or hospital directors.

b) Outstanding issues

179. The Advisory Committee notes with regrets that the data provided by the authorities does not include information on the number of deputies representing the Serbian national minority in Parliament. Also, it has to be noted that the adopted legal provisions on elections to parliament create unjustifiable distinction in treatment between candidates of different minorities, whose number, according to the census of 2011 is very similar. These provisions may have in practice a negative impact on the Roma. This may lead to discrimination, contrary to the provisions of Articles 4 and 15 of the Framework Convention.

180. The available figures indicate that persons belonging to national minorities continue to be underrepresented in public services. Notwithstanding the difficulty of obtaining reliable data, the authorities themselves acknowledge that the number of respondents employed in public services who indicated their Serbian nationality (8,6%), Bosniak nationality (4,1%), Albanian nationality (2,8%), Muslim (2,4%), Croat nationality (0,9%) and Roma (0.01%) demonstrates that the constitutional right to proportional representation has not been attained in practice.¹⁶ The situation is particularly unacceptable with regard to Roma, who, in spite of the growing number of Roma graduates, find it next to impossible to climb on the ladder of social mobility.

181. Generally, in spite of various programmes designed by the authorities in the framework of the Strategy to Improve the Position of Roma and Egyptians in Montenegro for the years 2012-2016 and an Action Plan for the implementation of the strategy in 2012, which aim to increase employment opportunities for Roma, their situation remains very precarious. According to some figures, more than 80% of Roma and Egyptians remain unemployed, and most of them are classified as “hard to employ persons” on account of lack of skills.

¹⁶ See the Montenegro second State Report, pg. 91, doc.ref. : ACFC/SR/II(2012)003.

Recommendations

182. The Advisory Committee calls on the authorities to review as a matter of urgency the electoral legislation with a view to eliminate provisions which may have a discriminatory effect on the Roma, incompatible with articles 4 and 15 of the Framework Convention.

183. The Advisory Committee also calls on the authorities to monitor the effects of the recent amendments to the electoral legislation to ensure that the principle of “authentic representation” of persons belonging to national minorities is respected.

184. More determined efforts should be made to find ways and means to implement the constitutional provision on the right to proportional representation of persons belonging to national minorities in the public services, and to improve substantially participation of the Roma - including Roma women - in the economic life of the country.

185. The authorities should ensure that the Roma and their organisations are treated as key partners in governmental programmes aiming at improving their situation. In so doing, they should endeavour to involve them in the drafting, implementation, monitoring and evaluation of measures taken by the different ministries to implement the National Action Plan.

Consultative mechanisms*Findings of the first cycle*

186. In its first Opinion, the Advisory Committee noted the forthcoming establishment of Minority Councils and was pleased to note that the establishment of the Fund for Minorities, foreseen in the Law on Minority Rights, with a budget corresponding to 0,15% of the state budget.

187. The Advisory Committee further considered that the Minority Councils have an important role to play in order to enhance the participation of national minorities in public and cultural life, including the smaller and more vulnerable groups such as the Roma and asked the authorities that they be adequately consulted together with other representatives of national minorities.

*Present situation**a) Positive developments*

188. The Advisory Committee acknowledges that six Minority Councils have been established under Articles 33-35 of the Law on Minority Rights to represent the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities. Each council numbers between 17 and 35 members and is composed half by ex-officio members (Members of Parliament and of the government, mayors and presidents of municipal assemblies representing respective minority) and half by representatives of the civil society elected at electoral assemblies of Minority Councils. The councils play an active role in raising public awareness of national minorities, creating a framework for discussion on national minority issues and making proposals on the outstanding issues affecting them.

189. The councils are entitled, *inter alia* to propose amendments to legislation and other acts regulating the rights of persons of national minorities and to request from the President of

Montenegro not to promulgate a law which the council considers to infringe on national minority rights. In addition, the councils can establish educational institutions and provide opinions on national minority-related issues reflected in the school curricula.

190. The functioning of the Minority Councils is supported financially by the authorities, with each council receiving 4 000 Euros per month to finance its running costs. Also, one representative of each Minority Council sits in the 17-member governing board of the Fund for Minorities, responsible for disbursement of substantial amounts of funding (equivalent to 0,15% of the state budget) to support the activities aimed at the preservation of national, cultural, linguistic and religious identities of persons belonging to national minorities.

b) Outstanding issues

191. The Advisory Committee is concerned by reports that Minority Councils' deliberations are burdened by the party political concerns of some of their members, with negative consequences for the focus on issues of concern for persons belonging to national minorities. This contributes to the perception shared by large segments of Montenegrin society that the councils may be used as vehicles for political patronage.

192. The Advisory Committee finds it particularly disturbing that there is no mechanism guaranteeing a gender balance in the composition of the Minority Councils. For example, it has to be noted that only two out of seventeen members of the Roma Council are women. The Advisory Committee notes with regret in this respect, that the election of the Minority Councils, which under the law is due in 2013, will be carried out according to the existing rules. This is unlikely to alter significantly the councils' composition, gender balance and partisan nature.

193. Another challenge facing the councils is their vaguely defined legal status. Although they are established by the Law on Minorities and have a role in the legislative process, they are essentially considered to be non-governmental organisations, without any real decision-making powers. The situation of the councils is aggravated by the fact that each of them acts independently, and there is no institutionalised structure allowing them to speak to the authorities with one voice on behalf of all minorities.

194. The Advisory Committee takes note of the sense of frustration prevailing among Minority Council members, who informed the Advisory Committee of their perception of not being paid due attention by the state entities other than the Ministry for Human and Minority Rights. The councils would like to be given an opportunity to address, and receive responses directly from other ministries, such as the Ministry of Education or the Ministry of Culture. According to national minority representatives, their written communications and requests for direct meetings are currently largely ignored. Also, the fact that the proposals put forward by the Minority Councils for funding of projects under the Fund for Minorities are largely ignored, with other projects submitted by political parties systematically being given priority adds to the perception among the council members of being a purely consultative forum without any real responsibility and influence over the affairs affecting the national minorities they represent.

Recommendation

195. The Advisory Committee urges the authorities to review, in consultation with representatives of national minorities, the legal provisions related to the election and functioning of the Minority Councils with a view to eliminating the identified shortcomings.

Economic participation*Findings of the first cycle*

196. In its first Opinion, the Advisory Committee invited the authorities to ensure that persons belonging to national minorities were fully involved in the planning, implementation, monitoring and evaluation of policies affecting the economic fabric of the territory where they lived in substantial numbers.

197. The Advisory Committee also noted that the Roma faced a difficult economic situation. It asked that the authorities take comprehensive, co-ordinated and evaluated action to tackle the complexity of their situation, in particular in the framework of the Roma strategy.

*Present situation**a) Positive developments*

198. The Advisory Committee is pleased to learn about the adoption of the National Strategy for Employment and Human Resources Development in the years 2012-2015. It is particularly noteworthy that one of the three key objectives of the strategy is to promote social inclusion through employment of Roma and Egyptians. Also, the authorities of Montenegro, in keeping with the commitments undertaken in the framework of the Decade of Roma Inclusion,¹⁷ signed in 2005, maintain a database on unemployment of Roma,¹⁸ which allows them to offer positions for which they are qualified.

199. The Employment Agency conducts a proactive policy aimed at increasing the employability of Roma and Egyptians. A number of schemes in the area of literacy (such as “Second chance project”, functional literacy programme and job training for adults), and subsidised employment through public works and seasonal work opportunities, have been developed.

200. The Advisory Committee commends that the deadline for regularising IDPs’ status has been repeatedly extended, and that out of an estimated 16 000 IDPs in Montenegro over 9 500 persons are undergoing the regularisation procedure. Several hundred Roma IDPs have received support from the authorities (including organised transportation and financial support) to help them obtain identity documents. Regrettably, in spite of these initiatives, a significant number of them still do not have identity documents which would enable them to legalise their status.

201. In this context the Advisory Committee welcomes Montenegro’s participation in the “Regional Housing Program” implemented in the framework of the so-called “Sarajevo Process

¹⁷ Declaration of the Decade of Roma Inclusion was signed in Sofia, Bulgaria, on 2 February 2005 by the Prime Ministers of Bulgaria, Croatia, the Czech Republic, Hungary, “the former Yugoslav Republic of Macedonia”, Montenegro, Romania, Serbia, Slovakia. Three other states (Albania, Bosnia and Herzegovina, and Spain) joined the Decade later.

¹⁸ Declaration of nationality is strictly voluntary for persons registered in the database on the unemployed.

on Refugees and Displaced Persons” with financial support by the international community. This programme aims to provide housing units for 6 063 people (1 177 households) allowing the closure of the Konik Camp by 2016.

202. Various schemes have been implemented in the economically disadvantaged northern part of the country, aiming to stimulate the economic development there. These initiatives indirectly aim to assist persons belonging to national minorities residing in these areas.

b) Outstanding issues

203. In spite of these efforts, participation in economic and social life for the Roma and Egyptians remains limited. The authorities acknowledge that a large number of Roma do not participate in the economic life of the country. The Advisory Committee notes that the Roma finding themselves in Montenegro as IDPs are in a particularly vulnerable position.

204. The Advisory Committee is informed by the Roma representatives that the prejudice against Roma lingering among the population is confirmed by the fact that even better educated Roma, including university graduates, are offered only positions in the unskilled jobs sector.

205. Also, it has to be noted that, in spite of the initiatives undertaken by the authorities, the economic difficulties affecting the northern part of the country, have led to large emigration including of persons belonging to national minorities.

Recommendations

206. The authorities should continue and increase efforts to develop and implement policies addressing the problems the Roma are facing in employment, and allocate adequate resources to remedy the situation. Vigorous action should be taken by the competent law enforcement bodies when discriminatory practices against Roma are established.

207. The authorities are urged to continue their efforts to develop economically the north of the country.

Article 16 of the Framework Convention

New territorial divisions and ethnic composition of the territorial units

Findings of the first cycle

208. In its first Opinion, the Advisory Committee considered that the authorities should strengthen the process of decentralisation of the country, while taking into account that any changes to municipal boundaries should not breach the principles contained in Article 16 of the Framework Convention and that national minorities be duly consulted in the process.

Present situation

a) Positive developments

209. The Advisory Committee is informed about the on-going discussions and local referenda in Gusine, Petnjica and Tuzi on the plans for the reform of local administration with a view to establishing these localities as separate municipalities. The Advisory Committee notes that persons belonging respectively to Bosniak and Albanian national minorities constitute a very

significant part of the population in each of these three localities and as a consequence their ability to influence public affairs is likely to increase.

b) Outstanding issues

210. The Advisory Committee notes that changes to the territorial structure of the country, while beneficial to some, may affect negatively others, in particular those persons belonging to national minorities who will find themselves residing outside of the borders of the newly established territorial units. Consequently, the Advisory Committee urges the authorities to proceed with caution and to consult representatives of national minorities on the borders of the newly established municipalities. The enjoyment of minority rights should not be unduly linked to a particular part of the territory. In addition, arrangements should be made to allow children belonging to national minorities to attend schools dispensing tuition in the languages of these minorities, regardless of their place of residence.

Recommendations

211. The Advisory Committee urges the authorities to ensure that the rights of persons belonging to national minorities are duly taken into account when planning and implementing the changes to the territorial division of the country. In particular, the authorities should ensure that there is no negative impact on the right of persons belonging to national minorities to participate effectively in public affairs at the local level in any of the units, both old and newly-established.

212. The authorities should ensure that school children belonging to national minorities continue to have access to education in minority languages irrespective of the changes introduced to the territorial structure of the country.

Articles 17 and 18 of the Framework Convention

Bilateral co-operation

Findings of the first cycle

213. In its first Opinion, the Advisory Committee took note of the authorities' positive approach to the issue of free contacts across borders for persons belonging to national minorities, in particular by opening additional crossing points in the south of the country and considered that the authorities should pursue this approach.

214. The Advisory Committee also noted with concern the situation of persons who obtained Serbian citizenship in addition to the Montenegrin one after the independence of Montenegro, and considered that discussions on a bilateral agreement on this issue should ensure that the situation is dealt with in a satisfactory manner.

Present situation

Positive developments

215. The Advisory Committee notes with satisfaction that Montenegro maintains very good relations with all of its neighbours. As a result, persons belonging to different national minorities face no particular difficulties in cross border contacts. The Advisory Committee was informed in particular of the construction of new roads and planned opening of new border crossings with Albania.

216. The Advisory Committee notes that although no specific agreement has been signed between Serbia and Montenegro concerning the situation of persons who obtained Serbian citizenship in addition to the Montenegrin one after the independence of Montenegro it seems that issues affecting persons belonging to national minorities are solved through practical pragmatic measures.

217. The Advisory Committee notes with satisfaction that Montenegro and Croatia signed an Agreement on the Protection of Montenegrin Minority in the Republic of Croatia and Croatian Minority in Montenegro in 2009. This agreement was ratified by Montenegro in 2011.

Recommendations

218. The authorities are encouraged to maintain the positive approach to the issue of free contacts across borders for persons belonging to national minorities.

219. The Advisory Committee encourages the authorities to maintain positive relations with neighbouring countries, to implement the existing bilateral agreements and conclude additional ones as required, in a spirit of good neighbourliness, friendly relations and co-operation between states.

III. CONCLUDING REMARKS

220. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Montenegro.

Positive developments

221. Montenegro has pursued a constructive approach towards the monitoring process and has taken useful steps to disseminate the results of the first cycle of monitoring. The authorities have maintained an inclusive approach in practice in the communication with representatives of national minorities. Important changes to legal provisions and administrative practice have been introduced to implement further the Framework Convention.

222. Although, the official approach is that the personal scope of application of the Framework Convention only extends to citizens, it has to be noted, that in practice the Montenegrin authorities' position is more open and flexible. It is to be welcomed that the authorities continue to consider, where appropriate, the inclusion of persons without citizenship of Montenegro in the application of the Framework Convention on an article-by-article basis.

223. The adoption in 2010 of the Law on the Prohibition of Discrimination and the establishment of the Council for the Protection against Discrimination strengthened the existing hitherto legal provisions on prohibition of discrimination. The shifting of the burden of proof in cases of discrimination and the provision allowing participation of non-profit public interest organisations in litigation are to be welcomed. In addition, a new Law on the Protector of Human Rights which addressed a number of shortcomings identified earlier was adopted in 2011.

224. The census conducted in 2011 in accordance with European and international standards provided useful data on population disaggregated by nationality, religion and mother tongue. The establishment of the Personal Data Protection Agency in 2010 and amendments to Personal Data Protection Law of 2012 harmonised legislation of Montenegro with the EU standards and strengthened guarantees for the protection of personal data.

225. The authorities continue to provide various forms of assistance in the field of cultural expression to persons belonging to national minorities. The Law on Monuments and the Law on Culture, both adopted in 2008, aim to establish standards for the protection and the promotion of culture based on the freedom of expression, respect for cultural rights, with equal preservation of all cultural identities and respect for cultural diversity. The Centre for the Preservation and Development of Minority Cultures, established in 2009, actively engages in promoting minority cultures by organising various events in languages of national minorities.

226. The Law on Electronic Media which was adopted in 2010 obliges public broadcasters to produce and broadcast programmes expressing cultural identity of all segments of society, including national minorities, and to produce and broadcast programmes in languages of national minorities in the areas inhabited by such groups. Public television and radio continue to broadcast a wide variety of programmes addressed to persons belonging to national minorities, including in their minority languages.

227. The Law on Personal Names, adopted in 2008 entitles applicants to have personal names entered upon request into record books or registries in one of the languages in official use in Montenegro, namely Albanian, Bosnian, Croatian, Montenegrin or Serbian languages. Furthermore, in conformity with the Law on Identity Card, applicants may request that data in an identity document be entered in one of the languages in official use in Montenegro. Finally, the Law on Record Books entitles applicants to receive certified copies from the record books in the language of the minority to which the applicant declares to belong to.

228. New curricula in the field of language and literature, including elements of Serbian, Bosnian and Croatian language and literature in the language courses at the primary and secondary level have been developed. "Civic education" promoting human rights, democracy and multicultural society has been introduced as a compulsory subject at the primary school level and as an elective subject at the secondary school level. Teaching in minority languages is organised at the primary and secondary level in the municipalities inhabited by persons belonging to the Albanian minority. Croatian language is taught at the primary school level in Tivat and Kotor.

229. Numerous initiatives have been undertaken by the Ministry of Human and Minority Rights, together with the Ministry of Education and the Roma Minority Council to assist Roma students in the education process. These include special scholarships, dormitories, transportation and tuition support for Roma children attending secondary and tertiary education, financing of Roma educational assistants and special measures entitling Roma students to enrol at the Podgorica University regardless of grades.

230. Electoral legislation was amended in 2011 and 2012 to create more favourable conditions for election of national minority deputies. At the municipal level, in particular where persons belonging to national minorities constitute the majority, they participate actively in local public affairs and hold posts of responsibility such as mayors, school principals and heads of police.

231. Minority Councils representing the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities have been established. The councils are entitled to propose amendments to legislation and other acts which regulate the rights of persons of national minorities and to address the President of Montenegro not to promulgate a law which the council considers to infringe on national minority rights. In addition the councils can establish educational institutions and provide opinions on the national minority-related issues reflected in the school curricula.

Issues of concern

232. In as much as the adoption of the Law on the Prohibition of Discrimination is a positive development, it has to be noted that the law did not establish a specialised body dealing with discrimination (specifically racial and ethnic discrimination) capable of providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys concerning discrimination, and publishing independent reports. Also, the definition of discrimination contained in the law does not fully comply with international standards.

233. The continued existence of the Konik Camp, where over 2 000 IDPs, mainly Roma from Kosovo* have been living for over a decade in most deplorable conditions, without electricity, running water and sanitation facilities suggests insufficient will on the part of the authorities to

resolve the issue. In spite of the assistance offered by the authorities, a significant number of Roma IDPs still do not have identity documents which would enable them to legalise their status in Montenegro.

234. Negative stereotypes and prejudices against persons belonging to the Roma minority, in particular the IDPs from Kosovo* continue to persist. The fact that a significant number of the IDPs have been effectively marginalised in the Konik Camp does not help in any way either to resolve the issue of IDPs itself or to combat the negative public perception of the Roma. More generally there is a lack of awareness in society of national minorities' identities and religions, cultural and social customs and traditions. The possibility for schools to devote 20% of the curriculum to the needs and interests of persons belonging to national minorities continues to be rarely used.

235. There have been no changes to the legislative provisions on the modalities for implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities and to display topographical indications in minority languages. The provision of the Law on Minority Rights that these rights are to be implemented "in the local self-government units in which persons belonging to national minorities constitute a majority or a considerable part of the population according to the last census" is too vague and open to interpretation.

236. In spite of the authorities' efforts to improve education opportunities for Roma children significant challenges remain to be overcome. An estimated 400 Roma children, mostly internally displaced, cannot attend schools due to the lack of identity documents. The drop-out rate of Roma children remains significantly higher than the average and the number of Roma children continuing education past primary education is unacceptably low. The situation of Roma girls and women is particularly vulnerable with regard to their right to education. The Roma educational assistants lack a clearly defined legal status and are employed on temporary contracts, making their position precarious and discouraging better qualified persons from seeking these positions. There are no classes teaching the Romani language.

237. The provisions of the Electoral Law create unjustifiable distinction in treatment between candidates of the Croat minority and Roma, whose number, according to the census of 2011 is very similar. This may lead to discrimination, contrary to the provisions of Articles 4 and 15 of the Framework Convention.

238. The Minority Councils are perceived by large segments of Montenegrin society as vehicles for political patronage. There is no mechanism to guarantee a gender balance in their composition. Another challenge facing the councils is their vaguely defined legal status, and they are essentially considered to be non-governmental organisations, without any real decision-making powers. The situation of the councils is aggravated by the fact that each of them acts independently, and there is no institutionalised structure which would allow them to speak to the authorities with one voice on behalf of all the minorities.

Recommendations

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

- monitor the implementation of the Law on the Prohibition of Discrimination with a view to eliminate identified shortcomings making it fully compatible with international human rights standards; reinforce the independence and the financial and human-resources related capacity of the Human Rights Protector to implement the law;
- continue to assist internally displaced persons (IDPs) with acquisition of identity documents; find, in consultation with those concerned, durable solutions which would enable the closure of the Konik Camp and provide for adequate integration or return opportunities for the camp's inhabitants including by allocation of necessary resources;
- expand the measures aimed at promoting tolerance and inter-ethnic dialogue throughout Montenegro; develop school curricula to include issues of interest to national minorities; increase efforts to raise public awareness of the history and cultural heritage of the various national groups;
- take specific measures to guarantee the right for education for all Roma children regardless of their status; redouble efforts to remedy other shortcomings faced by Roma children in the field of education;
- review the legislative and administrative provisions requiring the introduction of bilingual topographical signs and for the use of minority languages in dealings with the administrative authorities in the municipalities inhabited by persons belonging to national minorities and ensure that the right to use a minority language in relations with the administrative authorities is respected in all bodies of local self-government where the law is applicable;
- review the provisions of the electoral legislation establishing thresholds with a view to eliminate a possible discriminatory impact on the Roma;
- review legal provisions and administrative practice regulating the election and functioning of the Councils of Minority Nations with a view to eliminating the identified shortcomings, as regards the representativity of these organisations, their status and their co-operation with the authorities.