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

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**Opinion on Montenegro,  
Adopted on 28 February 2008**

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Table of contents:

I. PREPARATION OF THE CURRENT OPINION .....	5
II. GENERAL REMARKS .....	6
III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19 .....	10
IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE .....	35
V. CONCLUDING REMARKS .....	41

## EXECUTIVE SUMMARY

Following the receipt of the initial State Report of Montenegro on 25 July 2007 (due on 1 June 2007), the Advisory Committee commenced the examination of the State Report at its 30<sup>th</sup> meeting on 5-9 November 2007. In the context of this examination, a delegation of the Advisory Committee visited Montenegro from 4-8 December 2007, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on Montenegro at its 31<sup>st</sup> meeting on 28 February 2008.

Montenegro has taken important steps for the protection of national minorities: it adopted a Constitution which includes a minority rights chapter reflecting the principles of the Framework Convention. The National Strategy on Roma was recently adopted; national minority councils are in the process of being established and a substantial fund for minorities was approved by the Parliament, paving the way for increased support in respect of their cultures. The Advisory Committee welcomes the political will of the authorities, and in particular the Ministry of Human and Minority Rights, to enhance national minority rights protection in Montenegro.

The adoption of more detailed legal guarantees together with the availability of adequate implementation and monitoring capacity are now needed to fully implement constitutional rights and policy documents. Legal provisions on the use of minority languages in the relations between persons belonging to national minorities and the administrative authorities need to be made more specific. Further efforts need to be made regarding the availability of minority language teaching as part of the school curriculum, including for the Bosniacs/Muslims and the Croats. The difficulties experienced by many Roma in various fields of life requires a vigorous implementation of the newly adopted National Strategy and an adequate monitoring of the progress made in this context.

The authorities should address citizenship in a way that secures full and effective equality for persons belonging to national minorities. Due attention should be paid to ensuring that there is no unjustified restriction to the personal scope of application of the Framework Convention, and that accessing fundamental rights for those whose legal status is currently unclear, in particular the Roma and the Serbs, is guaranteed.

While inter-ethnic relations have remained peaceful, on the whole, in Montenegro, interaction and dialogue need to be expanded among the different segments of society. Media has an important role to play in this respect and efforts should be made to increase the availability of information on national minorities to the general public. Greater involvement of national minority journalists by editorial boards in the production of educational, cultural and other mainstream programmes is also encouraged.

The Advisory Committee considers that the implication of the constitutional right to “authentic representation” of national minorities in Parliament needs to be approached with all due caution so as to avoid any excessive polarisation of politics along ethnic lines and the monopolisation of discussions on national minorities by certain political parties.

The provision of the Constitution on “proportionate representation” of national minorities in public services needs to be made operational, notably by relying on data on the participation of persons belonging to national minorities and by catering for national minorities’ specific training needs to compete better for public posts.

Shortcomings regarding the effective participation of persons belonging to national minorities in economic life need to be addressed. National minorities should be closely involved in the implementation of regional development plans targeting economically-depressed areas where they live.

## **I. PREPARATION OF THE CURRENT OPINION**

1. The initial State Report of Montenegro (hereinafter: the State Report), due on 1 June 2007, was received on 25 July 2007. The Advisory Committee commenced the examination of the State Report at its 30<sup>th</sup> meeting, on 5-9 November 2007.
2. In the context of this examination, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the authorities of Montenegro on 16 November 2007. The Advisory Committee obtained replies to its questions in the course of the below-mentioned visit.
3. Further to an invitation from the Government of Montenegro, and in accordance with Rule 32 of the Committee of Ministers' Resolution (97) 10, a delegation of the Advisory Committee visited Montenegro from 4 to 8 December 2007 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this Opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.
4. The Advisory Committee subsequently adopted this Opinion at its 31<sup>st</sup> meeting on 28 February 2008 and decided to transmit it to the Committee of Ministers.
5. The present Opinion is submitted pursuant to Article 26 (1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

## II. GENERAL REMARKS

6. The Advisory Committee notes that the State Report provides a good overview of the main aspects of the legislative framework and the planned reforms pertaining to the protection of national minorities in Montenegro. The State Report also includes the criticisms on selected issues which were put forward by the NGOs involved in the reporting process. This is a commendable approach.

7. The Advisory Committee obtained a fuller picture of the situation during the above-mentioned visit to Montenegro (see paragraph 3 of the present Opinion). The Advisory Committee finds that the visit organised at the invitation of the Government of Montenegro provided an excellent opportunity to have a direct dialogue with relevant sources. The additional information provided by the Government and by other sources, including by representatives of national minorities, was most valuable, especially as concerns the implementation of relevant norms in practice. The meetings took place not only in Podgorica (including the municipality of Tuzi) but also in Bijeljo Polje, Berane and Rozaje. The Advisory Committee recognises the co-operative spirit shown by the authorities of Montenegro in the process leading to the adoption of this Opinion.

8. According to the State Report, two non-governmental representatives were invited to provide contributions during the process of drawing up the report. The Advisory Committee acknowledges the efforts made by the Government to open the reporting process to civil society associations and to channel their comments. At the same time, the Advisory Committee was informed that certain non-governmental organisations dealing with minority issues, were not invited to take part in this process. The Advisory Committee took also note of the wish expressed by some local authorities to be consulted during the reporting procedure. Against this background, the Advisory Committee hopes that more inclusive consultations will take place in the future. At the same time, the Advisory Committee encourages the Government to take further measures to improve awareness of the Framework Convention and encourages the authorities to make the present Opinion public upon its receipt in order to promote an inclusive and transparent process.

9. The Advisory Committee takes note of the fact that, following the independence of Montenegro on 3 June 2006, the Committee of Ministers of the Council of Europe, in its decision dated 14 June 2006,<sup>1</sup> agreed that the Republic of Montenegro was either a signatory or a party, as appropriate, to a list of open conventions, including the Framework Convention, with effect from 6 June 2006, the date of the notification of the succession by Montenegro. While taking due account of the new legal situation arising from the independence of Montenegro, the Advisory Committee wishes to highlight that it has already examined the situation of persons belonging to national minorities in Montenegro in the context of its first monitoring cycle in respect of the then State Party Serbia and Montenegro.<sup>2</sup> The comments made on this occasion

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<sup>1</sup> Decision of the Committee of Ministers adopted at its 967<sup>th</sup> meeting on 14 June 2006.

<sup>2</sup> See the Advisory Committee first Opinion on Serbia and Montenegro adopted on 27 November 2003.

may still be relevant *mutatis mutandis* in today's Montenegro and will therefore be referred to in the present Opinion, where appropriate.

10. On a general level, the Advisory Committee wishes to emphasise that in newly independent Montenegro, expectations from persons belonging to national minorities are high. They should be given due consideration. Indeed, reforms in the field of minority rights were pending or postponed for some years in Montenegro at the time of the State Union of Serbia and Montenegro. They gained momentum, however, with the discussion on the independence of Montenegro and were given central importance in the months preceding the referendum on independence. It is now up to the authorities to formulate a minority policy that duly takes into account the needs of persons belonging to national minorities and to ensure that its implementation is not lagging behind. This is important in order to ensure that the trust which persons belonging to national minorities have put in governmental policies is not undermined.

11. The Advisory Committee notes that the recently adopted Constitution of Montenegro includes commendable provisions on the rights of national minorities (see Chapter 5 of the Constitution). This paves the way for enhanced minority protection in Montenegro. It is now important that these constitutional guarantees are followed by further legislative harmonisation and the adoption of legal acts, which should fully reflect the principles of the Framework Convention.

12. The Constitutional Law for the Implementation of the Constitution of the Republic of Montenegro includes a timetable for the adoption and harmonisation of laws with the new Constitution<sup>3</sup> with predictably difficult deadlines to comply with. The Advisory Committee considers that establishing and respecting deadlines in the constitutional law is a matter of respect for the rule of law. The Advisory Committee notes with concern that the authorities failed to respect some of their constitutional commitments, as the deadlines have expired without the legislative acts concerned being adopted or harmonised.

13. While it is important that the pace of the reforms be sustained and that the deadlines set up by the Montenegrin authorities be respected (see above), the Advisory Committee underlines that these reforms should be conducted with a clear sense of the obligations they entail in practice and in a manner which secures local ownership. It is the Advisory Committee's view that a broad participation of national minorities in the reform process should be ensured so as to obtain their widest endorsement possible. Furthermore, it is of the utmost importance that an appropriate balance be found between the integration of all minority communities into the Montenegrin society and the respect and development of their specific identity. This holds true in particular in the fields of education and political representation.

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<sup>3</sup> The Constitutional Law for the Implementation of the Constitution of the Republic of Montenegro which was adopted at the same time as the Constitution contains a first list of laws, including the law on Montenegrin citizenship, which must be adopted within two months after the entry into force of the Constitutional Law. It also includes a second list of laws, including the 2006 Law on Minority Rights and Freedoms, which must be harmonised with the new Constitution within three months after the entry into force of the said Constitutional Law. The aforementioned deadline was extended by amendment to the Constitutional Law adopted on 5 February 2008.

14. A number of policy objectives and programmes such as the proportionate representation of persons belonging to national minorities in the public administration or the National Strategy on Roma will require an expansion of the tasks of existing institutions, or even the setting up of new structures. Given the dynamism of changes, the Advisory Committee considers that the institutional capacity needed for the implementation of these reforms should be carefully analysed and the resulting needs catered for by making adequate budgetary allocations and by taking other relevant measures. It is also important that clear instructions be drawn up in order to guide public administration in its new tasks.

15. The Advisory Committee notes that Montenegrin society did not experience interethnic violence as was the case of other countries in the region during armed conflicts. It considers that the Montenegrin authorities should ensure that pending court cases of human rights abuses by former members of the Yugoslav National Army and Montenegrin police of Bosniacs/Muslims living in the region of Bukovica in 1992-1993 should be investigated in a swift and effective manner and, in the case where violation is confirmed, the perpetrators brought to justice. This is important for newly independent Montenegro to gain the trust of its population in its institutions. At the same time, the Advisory Committee encourages the authorities to further enhance interethnic dialogue among the various components of Montenegrin society.

16. The Advisory Committee notes that, as a result of the violent break-up of Yugoslavia and of more recent events in Kosovo, Montenegro has taken in a considerable number of displaced persons into its territory. It is estimated that more than twenty thousand of these persons are still living on the territory of Montenegro with a temporary status, sometimes after some 10 years of residence or even more.<sup>4</sup> The Advisory Committee finds that such a situation may eventually be of relevance for the implementation of the Framework Convention in Montenegro.

17. The Advisory Committee also wishes to specify that in examining the implementation of the Framework Convention by Montenegro, it has taken into account the economic difficulties the country is facing at present. Aware of the importance of socio-economic conditions on the implementation of policies and measures that generally necessitate adequate financial resources, the Advisory Committee welcomes the efforts made by the authorities to protect national minorities as well as their concern to implement the Framework Convention.

18. In the following part of the Opinion, it is stated in respect of certain provisions that, based on the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. This statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. On the contrary, the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that

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<sup>4</sup> See the UNHCR document on *Persons of concern to UNHCR in Montenegro, Description as of 1<sup>st</sup> October 2007*.



appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

### **III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19**

#### **Article 1**

19. The Advisory Committee notes that following its independence on 3 June 2006, Montenegro has become party to a wide range of relevant international instruments. In addition, Montenegro committed itself to ratifying a number of treaties upon its accession to the Council of Europe, some of them being of relevance for the protection of national minorities. The Advisory Committee refers in particular to the European Social Charter (Revised) and the nationality-related conventions of the Council of Europe that is the European Convention on Nationality and the Convention on the Avoidance of Statelessness in relation to State Succession. Montenegro should follow suit on these commitments.

#### **Article 2**

20. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

#### **Article 3**

##### **Personal scope of application**

21. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of Montenegro is therefore deemed to be the outcome of this examination.

22. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

23. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

24. The Advisory Committee notes that the new Constitution of Montenegro endorses the principle of a civic state and refers in its Preamble to citizens, people and national minorities without establishing any hierarchical distinction. As far as the meaning of the term “national minorities” is concerned, the Advisory Committee refers, in the absence of a definition in the Constitution, to Article 2 of the 2006 Law on Minority Rights and Freedoms (hereafter: Minority Law) which contains the following definition of the term national minority:

*“For the purpose of the present law, minority shall mean any group of citizens of the Republic, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to the Republic and motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity”.*

25. The Advisory Committee finds it regrettable that the above-mentioned definition contains a citizenship requirement. This is in spite of the recommendations made in its first Opinion on the then Serbia and Montenegro<sup>5</sup> as well as the comments made by the experts of the Council of Europe, including the Venice Commission<sup>6</sup> during the drafting process of the law.

26. Indeed, as was already explained in these two contexts, using a citizenship requirement in a general provision dealing with the scope of application of minority rights is not appropriate as these rights are human rights and not rights of citizens. In addition, when new entities emerge following the break up of larger multiethnic states, a citizenship requirement can only have a negative impact on those persons whose legal status is unclear, in particular the Roma who face difficulties in obtaining confirmation of their citizenship, notably due to a lack of personal documents.<sup>7</sup> Bearing in mind the prevailing situation in Montenegro, such a requirement is particularly unsuitable (see related comments under Article 4 below).

27. In view of the foregoing, the Advisory Committee considers that Montenegro should make use of the planned harmonisation of the 2006 Minority Law with the Constitution<sup>8</sup> to remove the citizenship criterion from Article 2 of the said law and limit the use of the citizenship requirement only to those provisions, such as in those relating to electoral rights at national level, where such a requirement is relevant.

### **Census and the right of self-identification**

28. The Advisory Committee takes note of the results of the 2003 census which were published progressively as from September 2004.<sup>9</sup> The Advisory Committee welcomes the fact that this census was based on a sound legal framework but regrets that in practice, a number of

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<sup>5</sup> See the first Opinion of the Advisory Committee on Serbia and Montenegro adopted on 27 November 2003, paragraph 24: “[the Advisory Committee] calls on the authorities of Montenegro to ensure that the personal scope of application of the forthcoming law on the protection of national minorities will not contain any undue citizenship or other restrictions”.

<sup>6</sup> See the Opinion of the Venice Commission N° 270/2003 on the Revised Draft Law on Exercise of Rights and Freedom of National and Ethnic Minorities of the Republic of Montenegro, (CDL-AD (2004) 026). This position was reiterated in its Opinion N° 392/2006 on the Constitution of Montenegro (CDL-AD (2007) 105).

<sup>7</sup> See Report of the Venice Commission on Non-citizens and Minority Rights, CDL-AD (2007) 001, paragraphs 76, 90, 142 and 144 second indent.

<sup>8</sup> According to Article 8 of the Constitutional law for the implementation of the Constitution of the Republic of Montenegro, a number of laws including the law on Minority Rights and Freedom should be harmonised with the Constitution within three months as of the day of entry into force of the constitutional law (i.e. 19 January 2008).

<sup>9</sup> According to the results of the census, the ethnic structure of the population in Montenegro is the following: Montenegrins 43,16%; Serbs 31,99%; Bosniacs 7,77%; Albanians 5,03%; Muslims 3,97%; Croats 1,10%; Roma 0,42%; Yugoslav 0,30%; Macedonians 0,13%; Hungarians 0,06%; Slovenes 0,07%; Egyptians 0,04%; Russians 0,04%; Italians 0,02%, Germans 0,02%. Followed by others 0,35%; regional belonging 0,20%; unknown 0,99%; not declared 4,34%.

weaknesses relating to both the general conduct of the census and the analysis of its results, were reported, including by the authorities themselves.<sup>10</sup> Some of these weaknesses relate to the lack of awareness of the importance of the census amongst the general population and national minorities in particular. Concerns have been reported, including in the State Report, over the recording and processing of twofold replies (for example, Bosniac/Muslim, Montenegrin/Serbian, etc.) to the question on “nationality” (ethnicity): it appears that only the first term specified in the reply was taken into account by the census-takers. Such a practice was reportedly carried out without the persons concerned being consistently informed of it.

29. The Advisory Committee is aware that this census was carried out at the time of the then State Union of Serbia and Montenegro. It acknowledges that at that time, the political context was marked by a lack of clarity about the future status of Montenegro. This, for example, may have had an impact on the self-identification as Serb or Montenegrin. In addition, the Advisory Committee acknowledges that it is difficult to encapsulate in statistical data the complexity of the ethnic picture in a country where inter-ethnic marriages are numerous and where labelling one’s identity has been fluctuating over time according to the prevailing political context. For example, with reference to the Bosniac/Muslim communities, the Advisory Committee notes that while some would strictly define themselves as one or the other, others find that the difference should not be overemphasised. The Advisory Committee finds it essential that whatever the position, the principles contained in Article 3 of the Framework Convention should be fully respected.

#### **Article 4**

##### **Positive measures**

30. The Advisory Committee notes with satisfaction that the new Constitution includes a general clause on the prohibition of both direct and indirect discrimination (Article 8 of the Constitution). This clause explicitly provides for the introduction of positive measures by specifying that “regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality (...) shall not be considered as discrimination”. The Advisory Committee considers therefore that the introduction of such a clause in the Constitution - which is fully in line with Article 4 of the Framework Convention - is a most welcome development. It provides a clear and solid basis for the adoption of positive measures, the lack of which had previously led the Constitutional Court to invalidate the special voting rights introduced by the 2006 Minority Law (see related comments under Article 15 below).

31. The Advisory Committee would like to draw the attention of the authorities to Article 159 of the Criminal Code<sup>11</sup> which provides for sentencing of persons who grant privileges or

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<sup>10</sup> See page 8 of the State Report.

<sup>11</sup> Article 159 of the Criminal Code reads as follows: (1) “Anyone who, due to national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, property or other personal status denies or restricts the rights of man and the citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, shall be

exemptions based on national affiliation or affiliation to an ethnic group. This provision includes increased sentencing for persons who act in an official capacity. As it stands, and if interpreted as applicable to positive measures, this Article poses serious issues of compatibility with the Framework Convention. Although this provision has reportedly never been used in practice, the Advisory Committee calls on the authorities to ensure legal consistency and bring the situation fully in line with the principles of Article 4 of the Framework Convention.

### **Non-discrimination legislation**

32. At the legislative level, there exist some provisions on non-discrimination. These are scattered in various pieces of legislation on labour, employment and health care and education but they do not appear to cover areas like housing and access to services. The Advisory Committee notes with concern that some of these non-discrimination provisions only refer to citizens. The Advisory Committee considers that such restrictions are problematic as they introduce a potential difference of treatment between citizens and others which is not legitimate in the area concerned (see also comments under Article 3 above). The Advisory Committee asks the authorities to review the situation. It also invites the authorities to ensure that non-discrimination provisions apply to all relevant fields and to fill in the existing gaps in the protection against discrimination where needed.

33. The Advisory Committee notes that it is the intention of the authorities to adopt a specific law on non-discrimination. It strongly encourages the authorities to develop such a law and complete this work promptly so as to respect the commitments made upon Montenegro's accession to the Council of Europe.<sup>12</sup>

34. The Advisory Committee notes with concern that so far, the judicial system has not addressed problems of discrimination. Indeed, it appears that no relevant cases of discrimination have been examined by Montenegrin courts. The Advisory Committee notes that there may be a myriad of factors explaining this state of affairs including the lack of awareness of persons belonging to a national minority on their rights and the lack of confidence that they may have in addressing the courts and their lack of means to do so in the absence of a free legal aid system, insufficient training on non-discrimination among the judiciary and the difficulties to prove discrimination. The Advisory Committee calls on the authorities to examine the situation and take all measures in terms of legislation and policy to establish the necessary conditions for the implementation of non-discrimination provisions. The Advisory Committee hopes that the planned adoption of a specific law on non-discrimination (see above) will be instrumental in addressing the existing legal obstacles and invites the authorities to pay due attention to the

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sentenced to imprisonment not exceeding three years. (2) Should the act referred to in Paragraph 1 of this Article be committed by a person acting in an official capacity while performing his/her duties, s/he shall be sentenced to three months to five years of imprisonment.

<sup>12</sup> See the Opinion N° 261 (2007) of the Parliamentary Assembly of the Council of Europe paragraph 19.3.12: "The Assembly takes note (...) that the Republic of Montenegro is determined to honour the following commitments: (...) to *urgently* adopt a law on non-discrimination which guarantees that no one shall be discriminated on any ground such as sex, race, colour, language, religion, sexual orientation, handicap, political or other opinion, national or social origin, belonging to a national minority, property, birth or other status".

European Commission Against Racism and Intolerance (ECRI) General Policy Recommendation N°7 on National Legislation to Combat Racism and Racial Discrimination in the drafting process.

### **Role of the Protector of Human Rights**

35. The setting up of the Protector of Human Rights and Freedoms (hereafter: the Protector) is relatively recent in Montenegro. This institution was established in 2003 by law (see Law on Protector of Human Rights and Freedoms N° 41/03) and is now formally included in the new Constitution. The Advisory Committee is aware that the Office of the Protector is still in the process of establishing itself in the Montenegrin institutional landscape: organisational, staffing and general capacity issues still need to be addressed for the fulfilment of its tasks. There appears to be little knowledge about the institution among the general population and this limited awareness is particularly true amongst national minorities. This may explain why very few complaints have been submitted by persons belonging to national minorities so far.

36. The Advisory Committee considers that the Protector has a potentially important role in identifying and combating discrimination in Montenegro. It notes that the Protector has taken some first steps in this respect and finds it is essential that it is to be given the means to operate effectively with all guarantees of independence. Additionally, the Protector in its 2006 Report presented to the Parliament suggested that its outreach could be extended to the North and the South of the country. The Advisory Committee finds that such a proposal could facilitate access of persons belonging to national minorities to its services and invites the authorities to duly consider it .

### **Situation of the Roma**

37. The Advisory Committee finds that one particular challenge regarding the implementation of Article 4 of the Framework Convention in Montenegro is to ensure that Roma enjoy full and effective equality with the rest of the population. According to figures provided by non-governmental sources,<sup>13</sup> the majority of Roma still live in substandard housing conditions and a large number of them live in informal settlements, where basic utilities are often not available. Illiteracy rates are reported to be as high as 63%, even higher among women. Unemployment is reported to reach 82% among the community. 52% of the Roma, Ashkali and Egyptians are living under the poverty rate as compared to 12,2% of the national average.<sup>14</sup> While these figures are only estimates (see also below comments on the issue of statistical data), they give good indications of the extent of the problems faced by the Roma. Such a situation is not in line with the principles of Article 4 of the Framework Convention and needs to be addressed urgently.

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<sup>13</sup> See *inter alia*, *Decade Watch: Roma activists assess the progress of the Decade of Roma Inclusion: country report Montenegro*, released in June 2007 by Decade Watch. See [www.romadecade.org](http://www.romadecade.org). See also *Equal Access to Quality Education for Roma*, Monitoring Report, Volume 2, Open Society Institute, Education Support Programme, 2007.

<sup>14</sup> See *At Risk: The Social Vulnerability of Roma, Refugees and Internally Displaced Persons in Montenegro*, UNDP, November 2006.

38. The Advisory Committee welcomes the fact that the authorities have paid increased attention to the situation of Roma in recent years.<sup>15</sup> In particular, the adoption in 2005 of the Decade for Roma Action Plan as part of Montenegro's effort to join this regional initiative did represent a breakthrough since it was the first general policy document devoted specifically to the situation of the Roma. While some positive initiatives have been noted, for example, in terms of employment of Roma, the Action plan is often criticised for being too generally worded, lacking domestic ownership, adequate and sustainable funding, implementation and monitoring capacity, including assessment tools. In addition, it has failed to incorporate a gender dimension which in the Advisory Committee's view is essential in order to ensure that the particularly vulnerable situation of Roma women is given proper attention.

39. In this context, the Advisory Committee is pleased to note that the long-delayed Strategy for the Improvement of the Position of Roma Population (hereafter: National Strategy on Roma) was finally endorsed by the Government on 8 November 2007 (see also Article 15). This Strategy, which is conceived as a comprehensive and operational tool to integrate Roma in all aspects of social life, was prepared under the auspices of the Ministry of Human and Minority Rights. Roma representatives were involved in the elaboration of the Strategy and their views have been, for some, well reflected in the Strategy, an approach which the Advisory Committee finds laudable. Considering that so far Roma projects have been mostly dependent on external donors, the Advisory Committee finds it promising that the Montenegrin authorities have incorporated as part of the Strategy, the setting up of a financial structure which is to receive 0,2% of the State's annual budget for its implementation. The Advisory Committee notes with satisfaction that that funds have already been earmarked for 2008. It expects that this renewed commitment to Roma integration will bring about concrete changes for the Roma population. It calls on the authorities to use this new policy tool to fill in the gaps identified in the Decade Action Plan, including by introducing the gender equality dimension in the measures targeting the Roma in all fields, and especially in education (see Article 12 below).

### **Identity documents**

40. The Advisory Committee notes with deep concern that a large percentage of Roma still do not possess personal identity documents. This is a problem which had already been highlighted in the context of the Advisory Committee's first Opinion on the then Serbia and Montenegro. The situation is even more complicated when it comes to the Roma, Egyptians and Ashkali who fled Kosovo since these persons need to retrieve information from the civil registries which are located either in Serbia or Kosovo, when these still exist. This lack of personal documents has led them to be denied access to social rights: problems have been reported in access to education, health, housing and other social rights. In the field of housing, this population is more vulnerable to evictions since it has been living in illegal settlements as was for example the case in 2005, of the eviction of the Egyptian community living on Riverside in Berane. Assistance projects are being carried out to help Roma obtain personal documents: these are mostly carried out by NGOs with the support from the international community. While

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<sup>15</sup> See for example page 27 of the State Report where reference is made to the Development and Poverty Reduction Strategy, the Employment Strategy 2007-2010. See also in the field of education, the reference to the campaign All together in schools and the Roma Educational Initiatives

some positive changes have been reported in some instances (for example, a fee exemption has been granted to obtain documents), progress is regrettably slow. The Advisory Committee asks the authorities to redouble efforts to provide assistance to accessing personal documents by the Roma and develop appropriate measures for those whose documents are not currently available or do not exist.

### **Collection of ethnic data**

41. Reliable statistics on Roma will be needed for the Roma strategy to be effective. More generally, the Advisory Committee finds that there is a general lack of data that is disaggregated by ethnicity, sex and geographical location. While some independent studies or targeted surveys - usually financed by international organisations – exist, they are *ad hoc* and only provide for a limited account of the reality. The Advisory Committee understands that the Statistical Office of Montenegro (MONSTAT) launched a survey on the Montenegrin labour force at the end of 2007. It welcomes the fact that in contrast to the other surveys on housing and employment, the abovementioned survey included a question on ethnic affiliation. Some other initiatives are or have been taken but there is no co-ordinated approach amongst the main stakeholders in this field as to how to deal with ethnic data.<sup>16</sup>

42. The Advisory Committee finds that the lack of comprehensive ethnic data significantly complicates the task of the Government to design, implement and monitor its policies targeting national minorities. In this connection, it is essential that the Government of Montenegro step up its 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 and providing adequate guarantees for data protection (see below).

43. The current legislation of Montenegro does not provide adequate guarantees for the protection of personal data. The Advisory Committee notes that the authorities intend to review their legislation in this field. It considers that the authorities should urgently complete their planned revision of the Law on Data Protection 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.

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<sup>16</sup> The Advisory Committee refers to the plans of the Protector to gather data on the situation of Roma in employment. The Advisory Committee was also informed of similar plans by the Ministry of Human and Ethnic Minorities in the context of its first assessment of the situation. These have apparently not given concrete results as yet. See the Advisory Committee first Opinion on the then Serbia and Montenegro, paragraph 45: “The Advisory Committee therefore suggests that (...), the Government try to identify further ways and means of obtaining reliable statistical data and notes that some steps in this direction are already being taken by the Ministry of National and Ethnic Communities which has initiated research aimed at creating a “database or a social map” to determine the number of the Roma and their settlements as well as statistics on their position in such fields as education, health and employment”.



## Article 5

### **Legislative framework for the preservation of the culture of national minorities**

44. The Advisory Committee welcomes the fact that the preservation and development of minorities' culture is given constitutional protection (Article 79) and that the Minority Law includes the right for persons belonging to national minorities to express their cultural identity (Article 8 of the Law) and to organise themselves through associations in order to preserve and develop their culture (Article 9 of the Law). The said provisions of the Law provide for State support in this field, even though the funding of national minority organisations may be dependent on the availability of financial resources. The Advisory Committee hopes that the argument of financial constraints will not be used regularly to deny support.

### **State support in practice: procedures and participation of national minorities in decision-making**

45. The Advisory Committee notes that issues related to the culture of minorities are falling with the competence of the Ministry of Culture, Sports and Media and to some extent, the Ministry of Local Self-Government. The Advisory Committee understands that there is financing for cultural initiatives but that the competences are divided between the two aforementioned ministries. In addition, no specific budget line is earmarked for projects devoted to national minority cultures. In practice, the Advisory Committee notes from the information it has received, in particular from the Bosniac/Muslims and Croatian minorities, that the support to their cultural activities is deemed to be insufficient to maintain and develop their culture. It also appears that support is given either on an *ad hoc* basis or following public tenders and that no specific priority is set in such procedures. In some instances, procedures are reported to lack transparency and in others, formalities are reported to be too demanding for small NGOs with limited resources. In view of the foregoing, the Advisory Committee finds that there is at present no satisfactory mechanism for the promotion, preservation and development of minority cultures and calls on the authorities to review the situation.

46. The Advisory Committee notes that the 2006 Minority Law provides for the establishment of minority councils. These councils, which are to be established soon in accordance with the recently adopted rules governing the first elections, have been given a number of competences in the formulation of minority policies. The Advisory Committee welcomes the fact that Article 36 of the Minority Law explicitly states that representatives of national minorities, through their councils, shall participate in decision-making on budget allocation of the minority councils' funds. The Advisory Committee is pleased to note that the establishment of the fund for minorities foreseen in the aforementioned Law was approved by Parliament in January 2008 with a budget corresponding to 0,15% of the State budget devoted to the functioning of these councils, including support to national minorities projects. The Advisory Committee expects that this new system will be instrumental in making the allocation of funds to minorities more efficient by streamlining the processes and increasing their transparency and that it will better meet the needs of persons belonging to national minorities (see also comments made on the minority councils under Article 15).

### **Preservation of cultural monuments**

47. According to the State Report, cultural monuments “are uniformly protected in Montenegro”. Concerns were however expressed by representatives of some national minorities as to whether financial support for restoration and protection is allocated to monuments of all confessions. Despite its request for such information, the Advisory Committee was only provided with a partial reply on the maintenance of cultural monuments until 2005. The Advisory Committee recommends that the authorities keep a record of the support given to cultural monuments according to confession and/or national minority and considers that this information should be made available upon request.

48. In addition, reports were received according to which attacks and/or destruction of religious property have not led to adequate judicial proceedings. The Advisory Committee refers, for example, to the removal of the Catholic altar of St Petka Church.<sup>17</sup> The Court decided in 2006 that joint ownership of the Church by both Catholics and Orthodox should be maintained but as of today this decision has not been implemented. The Advisory Committee finds that it is the duty of the authorities to ensure that such acts are fully investigated and prosecuted and that the related court judgment is effectively implemented.

### **Cultural centre for national minorities**

49. The Advisory Committee has been informed that the opening of the cultural centre which has been on the agenda for quite some time (see also the Advisory Committee’s first Opinion on the then Serbia and Montenegro),<sup>18</sup> should be operational soon. The Advisory Committee hopes that there will be no further delay and that this centre will adequately cater for the needs of all national minorities without any undue distinction.

## **Article 6**

### **Interethnic dialogue, tolerance and reconciliation**

50. The Advisory Committee notes with satisfaction that Montenegro has, on the whole, managed to maintain good interethnic relations and tolerance amongst the different components of its population, including at times when violent conflict tore apart the region. Cases of alleged human rights abuse by former members of the Yugoslav National Army and the Montenegrin police of the Bosniacs/Muslims living in the region of Bukovica in 1992-1993 are currently pending before Montenegrin courts. The Advisory Committee finds it essential that the authorities ensure that these cases are investigated in a swift and effective manner and that perpetrators be brought to justice should violations be confirmed.

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<sup>17</sup> St Petka Church is a joint property of both Catholics and Orthodox and had two altars: one Catholic and one Orthodox.

<sup>18</sup> See paragraph 51 of the said Opinion dated 27 November 2003: “the decision, adopted by the Government of the Republic of Montenegro in June 2001, to establish a centre for the preservation and enhancement of cultures of national and minority groups in Montenegro, has not produced concrete results”.

51. One of the important challenges of the newly independent Montenegro is to ensure that tolerance continues and that interactions among its various ethnic groups are encouraged. The Advisory Committee finds that while the independence of Montenegro has given rise to a “*renaissance*” of the minority rights discourse on a political level, some empirical research suggests that at the same time, ethnic distance between the various components of the Montenegrin society has increased.<sup>19</sup> It also notes that there is a lack of interest from certain national minorities in developing interactions with other communities of Montenegro. Against this background, the Advisory Committee is of the opinion that due consideration should be given to measures which can promote interaction between the different ethnic groups of Montenegro, especially in the fields of education, culture and the media in line with the principles of Article 6 (see also below).

52. In the field of legislation, the Advisory Committee notes the existence in Montenegrin legislation of a specific provision that incriminates the dissemination of “ideas based on the superiority of one race over another or promote hatred or instigate racial discrimination” (see Article 443 of the Criminal Code). The Advisory Committee is not aware of any case-law regarding this provision of the Criminal Code and it refers to its comments under Article 4 regarding the measures to be taken by the authorities in order to allow for the effective use of judicial remedies by persons belonging to national minorities. The Advisory Committee also encourages the authorities to complete their hate crime legislation by explicitly providing in criminal law that racist motivation constitutes a specific aggravating factor.

### **Media**

53. In the sphere of media, the Advisory Committee notes with satisfaction that according to the information it received, the dissemination of negative stereotypes on persons belonging to national minorities does not appear to be a widespread problem.

54. A recurrent observation from representatives of national minorities concerns the low level of information made available to the general population on national minorities’ cultural life, events and problems which affect them. The Advisory Committee welcomes the fact that there is willingness on the part of the Public Radio and Television of Montenegro (RTCG) to improve diversity in reporting and calls on the authorities to ensure that the resources are available to public service media to reflect more widely on national minority culture in its programmes.

55. While there is a specific TV programme in Albanian in the public service media (see also comments under Article 9), it is not easily accessible to the general public due to the language barrier. Article 11 of the Minority Law includes the possibility for the authorities to provide translation of minority language programmes into the official language. The Advisory Committee understands that the Ministry of Culture, Sport and Media did make a proposal regarding the subtitling of Albanian programmes in the official language but that this proposal has regrettably not been followed up by the RTCG. The Advisory Committee encourages the

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<sup>19</sup> See CEDEM (Centre for Democracy and Human Rights in Montenegro), *Ethnic Distance in Montenegro*, April-May 2007, [www.cedem.cg.yu](http://www.cedem.cg.yu).

authorities to explore further the ways and means to make full use of Article 11 of the Minority Law.

### **Relations with law enforcement officials**

56. The Advisory Committee takes note that few incidents of police mistreatment targeting minorities have apparently been reported. The only case which is frequently referred to, including in the State Report, involves the arrest of a group of Albanians, on the grounds of terrorist networking, as part of the anti-terrorist operation called “Eagle Flight Operation” in 2006. Investigation of the case is underway and the Advisory Committee calls on the authorities to ensure that the allegations of torture and ill-treatment of the persons arrested will be fully and impartially investigated.

57. During the dialogue the Advisory Committee had with the authorities, the possibility that some behaviour by the police may have a racist motivation tended to be dismissed at the outset. In the Advisory Committee’s view, the fact that few cases have been reported does not necessarily mean that there are no problems in this field. The Advisory Committee understands that a new system of supervision of the police has only been recently set up: it takes the form of a committee (Committee for Civil Control of Police Work) placed under the authority of the Ministry of the Interior. The Advisory Committee hopes that this Committee will be given the status and resources needed to act promptly and independently on allegations of ill-treatment of persons belonging to national minorities by law enforcement officials.

58. The Advisory Committee finds it positive that the authorities have taken steps – albeit limited for the time being – to recruit Roma persons as police officers. The authorities are encouraged to continue to recruit persons belonging to national minorities into the ranks of the police and to pay particular attention to their retention.

### **Displaced persons**

59. The Advisory Committee recalls that the personal scope of application of Article 6 of the Framework Convention is wide: it includes all persons living in the territory and covers therefore non-citizens, asylum seekers and refugees. The Advisory Committee notes in this respect that Montenegro has taken in a large number of persons from Croatia and Bosnia and Herzegovina who arrived during the early-mid 1990s as well as many Roma, Ashkali and Egyptians who have fled Kosovo since 1999. According to the information provided by UNHCR,<sup>20</sup> the number of these persons is estimated at approximately 8 000 for persons from Croatia and Bosnia and Herzegovina and approximately 16 000 for the displaced persons from Kosovo. The Advisory Committee acknowledges that Montenegro has already taken steps in order to address their situation. For example, it adopted a law on asylum in 2006 which provides for a sound legal framework for determining the status of non-nationals present on the territory of Montenegro. Although the latter entered into force in 2007, concerns remain over the implementation of the law which needs to be addressed.

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<sup>20</sup> See the UNHCR document on *Persons of concern to UNHCR in Montenegro, Description as of 1<sup>st</sup> October 2007*.

60. However, as of today, most of these displaced persons still do not have any permanent status: they are only given an *ad hoc* status which is subject to regular renewal and as temporary residents, these persons do not have adequate access to fundamental social rights. For example, as of 2002, the employment of displaced persons is conditioned to the authorisation of the Montenegrin Employment Agency and the payment by the employer of an additional fee. In practice, this requirement has led to the further exclusion of this population from the labour market and increased their marginalisation in the Montenegrin society. This may negatively affect the implementation of Article 6 of the Framework Convention.

61. The Advisory Committee expects that together with the 2006 Law on Asylum, the draft law on citizenship will be able to resolve the situation of the large majority of the displaced persons. In particular, the Advisory Committee calls on the authorities to ensure that the conditions laid down in the law for obtaining Montenegrin citizenship will not place undue obstacles to those persons who have left other parts of the former Yugoslavia during earlier conflicts and who have been residing in Montenegro for a sufficient number of years. In particular, the Advisory Committee calls on the authorities to take due account of the socio-economic situation of the Roma, the difficulties connected with residency requirements and identity documents.

### **Human trafficking**

62. In its first Opinion on the then Serbia and Montenegro, the Advisory Committee expressed its deep concern about the phenomenon of human trafficking and its negative impact on the protection of persons belonging to national minorities. Despite the efforts made by international and national actors, such a phenomenon is still reported to happen, sometimes in connection with offers of employment from abroad or early marriages arranged by the families. For example, there are worrying allegations that trafficking takes place in the Konik camps which bring together Roma, Ashkali and Egyptians displaced from Kosovo. The Advisory Committee welcomes the fact that the authorities have recently adopted a national anti-trafficking strategy and considers that resolute action should be taken in this context to put an end to such phenomenon. The authorities should also duly consult with the communities and in particular the women of these communities in the implementation process of this strategy.

#### **Article 7**

63. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

#### **Article 8**

### **Legal and institutional framework**

64. Religious freedom is guaranteed in the newly-adopted Montenegrin Constitution. This right is also included in the 1977 Law on Legal Position of Religious Communities. This law foresees that all religious organisations need to register with the local branch of the Ministry of the Interior.

65. The dialogue between the authorities and the religious communities, as well as the work of the Governmental Commission for Relations with the Religious Communities, are reportedly largely unsatisfactory. The Advisory Committee invites the authorities to review this situation and make the necessary changes, including institutional changes, in order to step up this dialogue.

### **Respect for religious diversity in practice**

66. The Advisory Committee notes that a lack of sensitivity to the conditions needed for persons who practice Islam has been reported in certain contexts. The State Report refers in particular to the lack of respect for burial customs as well as the insufficient availability of designated premises to practice Islam. The Advisory Committee welcomes the fact that the authorities have demonstrated self-criticism on this issue and encourages them to ensure that respect for religious differences is accommodated. The authorities should also take steps, in consultation with the religious communities concerned, to find lasting solutions to the aforementioned problems.

## **Article 9**

### **Legislative framework**

67. The Advisory Committee welcomes the fact that the legislative framework of Montenegro includes specific provisions regarding minority language use and programming in the media. The legal framework described in its first Opinion on the then Serbia and Montenegro<sup>21</sup> has been supplemented by a specific provision in the 2006 Minority Law, which obliges the authorities to provide appropriate public broadcasting time for minority language programmes. This provision also gives the authorities the possibility to adopt incentive measures for private broadcasters to include minority language programming. This additional guarantee is a welcome development.

### **Minority broadcasting in practice**

68. The Advisory Committee finds that in practice there is a 15-minute daily programme in Albanian on the first public channel and a 50-minute programme at the weekend. Efforts have been made to provide programmes intended for Roma. These take the form of documentaries broadcast occasionally on the public channel and a weekly show broadcast by an independent radio, Radio Antena with the support from the Ministry of Culture, Sports and Media, a local NGO and international organisations. While these are positive examples, the Advisory Committee finds that the volume of minority programming could benefit from a regular review so as to ensure that it indeed reflects the needs of the national minorities concerned. Furthermore, the development of minority programme broadcasts is reported to be insufficient at the local level. This state of affairs does not seem to be in line with Article 100 of the Broadcasting Law according to which not only the Republic but also local administration units shall provide a part of the funds for the programming in minority languages. The Advisory

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<sup>21</sup> This includes provisions in the 2002 Media and Broadcasting Laws.

Committee recommends that a review of the situation be made so as to encourage the development of further programming in minority languages at the local level.

69. National minorities may receive certain radio and television programmes from their kin-State as is the case for the Albanians, Croats, Bosniacs/Muslims, Serbs, Slovenes and Macedonians. With the exception of the Albanians, domestically produced programmes are non-existent for the other national minorities and their specific needs in terms of cultural content are not adequately catered for. In this connection, the Advisory Committee finds it important that access of journalists from these national minorities be further promoted and that in practice, these journalists be closely involved in the production of educational, cultural and other mainstream programmes, something that is apparently lacking.

### **Print media**

70. In the field of print media, the Advisory Committee welcomes the fact that the Ministry of Culture, Sport and Media is co-financing a monthly supplement of the Albanian newspaper *Pdjeba* which is also available on the internet. Yet, the Advisory Committee finds that the existing support – albeit limited – could also address the needs of other national minorities. In particular, more attention should be paid to the situation of the press of other minorities such as the Croats and the Bosniacs/Muslims, which as of today largely rely on non-governmental funds and find it increasingly difficult to maintain their publishing activities.

## **Article 10**

### **Use of minority languages in public**

71. The Advisory Committee welcomes the fact that the principles of Article 10 of the Framework Convention are reflected in general terms in the new Constitution.<sup>22</sup> These are further developed in Article 11 of the 2006 Minority Law which provides for the official use of minority languages in those local self-government units where persons belonging to national minorities constitute “the majority or a considerable part of the population”.

72. The law further defines the meaning of “official use” which includes administrative and court proceedings, issuance of documents, electoral materials and work of State bodies. The Advisory Committee also notes that according to the Law on the Capital municipality, in Tuzi where the Albanians make up approximately 60% of the population according to the last census, the Albanian language is recognised as an “official language” in addition to the official language of Montenegro. In other municipalities where persons belonging to national minorities live in

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<sup>22</sup> See Article 79 of the Constitution: “Persons belonging to minority nations and other national communities shall be guaranteed the rights and liberties which they can exercise individually or collectively with others as follows:

(..)

3) the right to use their own language and alphabet in private, public and official use;

(..)

5) the right, in the areas with significant share in the total population to have the local self-government authorities carry out proceedings also in the language of minority nations and other minority national communities.

substantial numbers, namely the municipality of Ulcinj<sup>23</sup> and Plav,<sup>24</sup> similar provisions exist for the Albanian (Ulcinj and Plav) and Bosnian language (Plav).

73. In practice, no concerns have been expressed regarding the use of minority languages in public (Article 10 paragraph 1 of the Framework Convention). There is however legal uncertainty regarding the use of minority language in relations with administrative authorities as foreseen in Article 10 paragraph 2 of the Framework Convention. It follows from Article 11 of the Minority Law that the threshold for the “official use” equally applies to internal work of administrative or judicial bodies and to relations between the administration and persons belonging to national minorities. The Advisory Committee finds that the conditions set forth for the official use of minority language i.e. that persons belonging to a national minority should constitute “the majority or considerable part of the population” may be subject to restrictive interpretations. Against this background, the Advisory Committee finds that the authorities should bring legal clarity in order to ensure that the local authorities interpret this requirement in a manner which is in keeping with the principles of the Framework Convention. The Advisory Committee considers that the authorities should inform persons belonging to national minorities of the possibility that they have, to exercise their right, and make the necessary resources available to this end.

## **Article 11**

### **Use of minority languages for names of persons**

74. The Advisory Committee welcomes the fact that the right to use one’s name in a minority language and its official recognition are guaranteed by the Constitution<sup>25</sup> as well as other pertinent legislation (Minority Law and Law on Personal Names). However, the Advisory Committee received information – also reflected in the State Report – that the exercise of this right has been hampered in practice. Indeed, in the absence of bilingual registration forms which would take into account the specificity of the Albanian language, registration of Albanian names in the official language has led to some distortions. It notes, in this context, the specific role played by the Protector in identifying and investigating this problem, as well as providing recommendations to the relevant authorities both at the central and local levels. As a result, work has been undertaken by the Ministry of the Interior in order to develop a national register and issue documents in a way which accommodates the specificity of the Albanian language. The Advisory Committee notes with satisfaction that the issue is also being addressed in the context of the drafting of a new Law on Civil Registers. Nevertheless, for those whose names have been

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<sup>23</sup> According to the last census, the Albanian population reaches approximately 72% of the total population of that municipality

<sup>24</sup> According to the last census, the Bosniac/Muslim population reaches approximately 56% of the total population of that municipality. The Albanian population reaches approximately 20%.

<sup>25</sup> See Article 79 of the Constitution: “Persons belonging to minority nations and other national communities shall be guaranteed the rights and liberties which they can exercise individually or collectively with others as follows:

(..)

7) The right to write their own name and surname in their own language and alphabet in the official documents;



altered, the procedure to revert to their original names has been described as complex and corresponding applications have been processed with great reluctance by the competent authorities. Mindful of the legislative work in progress, the Advisory Committee calls on the authorities, including at the local level, to ensure that the procedure in place is followed without any undue complications or additional costs for those concerned.

### **Topographical indications in national minorities' languages**

75. The Montenegrin legislation guarantees the right to display topographical indications in the language of national minorities. This right is subject to the same conditions provided for the official use of minority language, i.e. it is applied in these territories of local self-government in which persons belonging to national minorities make “the majority or a considerable part of the population” (Article 11 of the Minority Law). While there are examples of implementation in areas where Albanians constitute the majority of the population (Ulcinj or Tuzi), the Advisory Committee understands that the application remains limited to only a few areas in the country. The Advisory Committee therefore invites the authorities to ascertain whether there is a demand by persons belonging to national minorities for such signs. Appropriate measures should also be taken to encourage a more extensive application of this provision by the local authorities where relevant.

### **Article 12**

76. The Advisory Committee finds that the implementation of the principles of Article 12 of the Framework Convention are giving rise to important challenges in Montenegro. The education sector is currently in need of important reforms, some of which have already been initiated and need to be developed further.

### **Curricula and textbooks**

77. One of the prime concerns in this area relates to the content of curricula and textbooks where steps have been taken since 2003. In particular, a special commission including national minority representatives started to revise the school curricula and has now completed its work for all levels of teaching. The on-going implementation of the new curricula needs to be coupled with the production of updated textbooks and teaching materials. Efforts are being made to remove all ethnically offensive content in textbooks but these seem to be insufficient as the content of Albanian textbooks is still reported to offer poor translation from Serbian textbooks and to insufficiently reflect the Albanian culture. Furthermore, the Bosniac/Muslim minority complained that textbooks do not take into account the cultural and religious sensitivity of their community. The Advisory Committee encourages the authorities to complete the revision process in close co-operation with representatives of the national minorities and remedy the reported shortcomings.

78. The Advisory Committee notes with satisfaction that Montenegrin legislation allows school authorities in co-operation with the local community, to propose up to 20% of the curriculum in order to reflect better the needs and interests of persons belonging to national minorities (General Law on Education). However, this possibility has regrettably, if rarely, been used in practice. Various factors may explain this situation including the novelty of such a

provision in a traditionally centralised state, the lack of initiative of the school administration in the absence of instructions by the central authorities as well as the lack of textbooks and teaching materials adapted to such curricula.

79. The Advisory Committee calls on the authorities to consider ways and means to promote the use of this provision by the local authorities in order to integrate the culture, history, language and religions of national minorities more effectively in the school curricula in accordance with Article 12 of the Framework Convention. In so doing, they should involve the minority councils, which once established, should be given adequate opportunities to give their opinion on the school curricula in accordance with the Minority Law and engage in open consultation with other representatives of national minorities.

### **Teacher training**

80. Teacher training presents another challenge. The Advisory Committee understands that the shortage of trained teachers is a general problem in Montenegro, but notes that the situation is critical when it comes to minority language teachers. This poses a serious obstacle for the development of minority language education (see also Article 14). According to representatives of national minorities, the training needs are particularly acute for Bosnian and Croatian language teachers. The Advisory Committee welcomes the fact that the Faculty of Philosophy in Niksic now includes a department for Albanian language teachers. In addition, part of these studies may be followed in Podgorica University which further facilitates the accessibility of such studies to the persons belonging to the Albanian minority. Given the situation of teaching in Croatian and Bosnian languages, the Advisory Committee invites the authorities to consider accommodating teacher training needs of these minorities within the existing facilities by relying, as appropriate, on bilateral agreements of co-operation and teacher exchanges.

### **Roma pupils in schools**

81. The situation of Roma pupils is a source of serious concern. The poverty in which many persons from this community live makes it difficult for Roma parents to send their children to school and pay for their textbooks and other school supplies. Economic obstacles are often coupled with problems generated by the school system itself, which has failed to offer an environment adapted to the specific needs of the Roma. As a result, figures relating to school enrolment are still alarmingly low, drop out rates extremely high, with indicators suggesting that the situation of Roma girls is especially serious. Furthermore, the Advisory Committee notes that a large number of Roma, Ashkali and Egyptian pupils from Kosovo face specific problems in accessing education such as their lack of proficiency in Montenegrin or their lack of documents (see also Article 4). The Advisory Committee considers that the authorities should take the necessary measures to remove these obstacles. Particular attention should be paid to the enrolment of Roma in pre-school education where they could be given language support.

82. An important concern in the field of education of Roma lies with the existence of classes which are entirely composed of Roma pupils. This is especially so in geographic areas where there is a concentration of displaced persons from Kosovo. These cases of segregation which were already signalled in the Advisory Committee's first opinion on the then Serbia and Montenegro are the result of a residential segregation of the Roma community. They are also the

result of a process whereby parents of non-Roma children tend to withdraw their children from the schools in which a large number of Roma children are enrolled. *De facto* segregation can only contribute to a further stigmatisation of Roma and increase their marginalisation. Although the Ministry of Education has committed itself to address this issue, this commitment has not given rise to tangible results as yet. The Advisory Committee calls 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.

83. The Advisory Committee, on the other hand, welcomes the fact that the specific problems of the Roma are increasingly addressed by the authorities. Some promising initiatives have been carried out over the last years such as the Roma Education Initiative which has introduced Roma assistants into selected schools, notably in Podgorica, Niksic and Berane. Textbooks have been distributed free of charge. However these projects are limited in scope, they are often *ad hoc*, mainly run by NGOs with the support of the international community and do not enjoy sustainable funding.

84. The Advisory Committee calls for decisive measures to be taken in the context of the National Strategy on Roma to address this situation (see also under Article 4, paragraph 39). In particular, the Advisory Committee finds it essential that data be collected on school attendance at all levels, while respecting the principle of self-identification and providing guarantees for the protection of personal data, and that particular attention be paid to the situation of Roma girls in this context. It calls for the recruitment of teachers and their continuous training in inclusive pedagogies, close consultation of the Roma community together with resolute commitment from the authorities both at the central and local levels. These measures will be essential for this Strategy to turn into an instrument of concrete change.

#### **Access to higher education**

85. In the field of higher education, the Advisory Committee notes from the State Report that a governmental decision dated 28 September 2001 allows for access of students from national minorities to university under facilitated conditions. Such a positive measure has been consolidated in Article 19 of the Minority Law which provides that the University of Montenegro can, at the proposal of the minority council, enrol a certain number of students belonging to national minorities at the beginning of each academic year in addition to those enrolled through the regular procedure. The Advisory Committee learnt, however, that in practice, such a system has in fact operated until now in an *ad-hoc* and non-transparent way.

86. Against this background, the Advisory Committee considers that some further reflection needs to be made by the authorities on the issue of improving the access of national minorities to higher education. A regular demand of persons belonging to national minorities, especially among the Albanian minority, concerns the introduction of a quota system at University level. The Advisory Committee finds that while quotas are one form of positive measures, they do not cover the whole spectrum of measures that could be taken in order to redress a situation of inequality. In the field of education, other measures such as additional classes, or exemptions of selected exams taking into account language and other barriers, could be explored in order to increase access of persons belonging to national minorities to higher education.

### **Recognition of diplomas**

87. The issue of non-recognition and delays in the recognition of certain diplomas from educational institutions abroad, which was highlighted in its first Opinion on the then Serbia and Montenegro, has been further addressed by the authorities in the context of the Bologna process. Additionally, a draft Law on the Validation of Diplomas should be adopted soon. The Advisory Committee encourages the authorities to adopt this draft law and ensure its full implementation in practice.

#### **Article 13**

88. The Advisory Committee welcomes the fact that Article 17 of the Minority Law recognises the right of persons belonging to national minorities to establish private educational and pedagogic institutions. This has led to the establishment of an Albanian high school in the municipality of Ulcinj in 2006.

#### **Article 14**

### **Legal framework for minority languages education**

89. The Advisory Committee welcomes the fact that the right to receive education in minority languages is included in the new Constitution and is further guaranteed in the 2003 Law on General Education and in the 2006 Minority Law. It results from the pertinent legal provisions that teaching in a minority language is foreseen in the municipalities where a national minority constitutes “a majority or a significant part of the population” (Article 11 paragraph 2 of the Law on General Education). The minimum number of pupils required for opening a class with minority language teaching can be lower than for classes in the State language but in no case should it be less than 50% of the number of pupils required by law (Article 13 of the Minority Law). The Advisory Committee also notes that the same provision states that “when the teaching is delivered in a minority language, the official language and its alphabets shall be compulsory”. As already pointed out in its first Opinion on the then Serbia and Montenegro, the Advisory Committee finds that further clarity needs to be provided for the implementation of minority-language teaching provisions (see also its comment related to the threshold for official use of minority languages under Article 10 of the Framework Convention). This is all the more so that the situation in practice seems to reflect a greater reluctance towards the conditions to introduce minority language education in those areas where national minorities constitute less than the majority of the population.

### **Teaching of minority languages**

90. In practice, teaching in Albanian is *de facto* the only minority language that benefits from specific arrangements: Albanian language teaching is organised from pre-school to secondary education in the Albanian dominated areas.

91. The situation differs for Croatian, Bosnian and other minority languages. The Advisory Committee refers in this context to the claim made to introduce classes of Croatian language in elementary schools in Kotor and Tivat. The Advisory Committee notes that efforts have been

made by the Ministry of Education and Science to follow-up on this request but regrets that such teaching has apparently been provided outside the regular school schedule. It is all the more regrettable that the attendance of Croatian pupils, discouraged by the optional character of these classes which were reportedly delivered as private classes, has substantially decreased over time. The Advisory Committee calls for a review to ensure that these classes are fully integrated into the regular school curriculum. More generally, the Advisory Committee finds that there is a great lack of clarity as to what the provisions are to cater for Croatian, Bosnian and other minority languages. Mindful that there may be a debate on the issue of the official language of Montenegro and its relations to other Slavic-languages spoken in the region, the Advisory Committee invites the authorities to pay all due attention to the specific needs expressed by the Slavic-language speaking minorities of Montenegro in acquiring, maintaining and developing proficiency in their mother tongue. Consequently, increased efforts should be made in this respect, in particular for minority language teacher training (see also comments under Article 12).

### **Teaching of Roma language**

92. The language needs of the Roma have received little attention since the first Opinion of the Advisory Committee on the then Serbia and Montenegro. Indeed, it appears that priority was given to the need to integrate Roma children into regular schools. The conditions (staff, textbooks, teaching techniques) to provide Roma language teaching are currently non-existent in Montenegro. While promoting Roma integration into mainstream education is a legitimate aim, the possibility to learn one's minority language in accordance with the principles of Article 14 of the Framework Convention should be given proper attention. The Advisory Committee finds it positive that the National Strategy on Roma incorporates provisions on the learning of Roma language. The implementation of these provisions requires adequate support.

## **Article 15**

### **Electoral representation**

93. The 2006 Minority Law contains provisions on the participation of persons belonging to national minorities. Articles 23 and 24 provide for reserved seats both in the Assembly of the Republic of Montenegro and in the assemblies of local self-governments. However, in its decision 53/06 dated 11 July 2006, the Constitutional Court declared these provisions invalid on the grounds that this preferential system in the field of electoral rights lacked a constitutional basis. The situation has now been partly resolved with the introduction of Article 79 in the new Constitution of Montenegro which lays down the right to "authentic representation" in the Parliament and local self-governments according to the principle of affirmative action. As a result, the debate has now been re-opened on the model to be adopted in order to implement this constitutional provision through relevant legislative provisions.

94. The Advisory Committee attaches great importance to the current efforts made to find a solution which would ensure a fair representation of national minorities in Parliament in accordance with the principles of Article 15 of the Framework Convention. The Advisory Committee understands that there are limits to what an electoral system can guarantee, but finds

that the needs for representation of smaller and more vulnerable groups should not be overlooked. The Advisory Committee is also of the opinion that the design of measures to implement the principle of authentic representation should be approached with all due caution so as to ensure that these measures do not lead to any excessive polarisation of politics along ethnic lines and monopolisation of ethnic discussions by certain parties.

### **Representation in public administration**

95. The Advisory Committee notes that persons belonging to national minorities have complained about their under-representation in the public administration and in the judiciary. In this context, the Advisory Committee notes with interest that Article 79 of the new Constitution includes a right to “proportionate representation” in public services, State authorities and local self-government bodies. The Advisory Committee finds that the overall objective to increase the participation of persons belonging to national minorities in public administration is valuable. However, lack of consensus to the implications of the right to “proportionate representation” calls for specific action by the authorities to develop a system for collecting data on participation of persons belonging to national minorities in all public administrations and services. They should set up targets and employment guidelines and impose on the respective authorities the regular monitoring of the participation of persons belonging to national minorities. The Advisory Committee expects that the Strategy on Minority Policy that is currently being drafted will fully reflect on these issues.

96. Furthermore, the Advisory Committee wishes to stress that the issue of “proportionate representation” should not be equated to a mathematical operation but rather used in a flexible manner, including giving due consideration to the skills of the persons recruited. The Advisory Committee finds that continuous efforts should be made to ensure that equal opportunities are guaranteed including the use of positive measures. The Human Resources Management Board of the Ministry of the Interior, which is in charge *inter alia* of training programmes of civil servants, should pay specific attention to the training needs of persons belonging to national minorities both as regards recruitment into public administration, and in-service training.

### **Institutions and mechanisms for effective participation**

97. The Advisory Committee welcomes the establishment of the Ministry for Human and Minority Rights which should play a key role in formulating and implementing minority policies in consultation with representatives of national minorities. Recent action by this Ministry bears witness to its commitment in this respect. The Advisory Committee finds, however, that there is scope to further strengthen governmental structures dealing with national minorities. Discussion on minority issues should not be reduced to this ministry at the exclusion of other branches of the Government: other sectors need to be actively involved and the resulting action co-ordinated. The Advisory Committee understands that, so far, the issue of governmental co-ordination has been approached in a very informal manner by Montenegrin authorities. The Advisory Committee finds that thought should be given, in the context of drafting the Strategy on Minority Policy, to enhancing co-ordination so as to ensure that minority policy is designed and delivered in a consistent way throughout all the different branches of the Government.

98. The Advisory Committee finds that the implementation capacity within the governmental structure often does not match the ambitious plans designed for minority protection. In this respect, the staffing situation within the responsible governmental sectors dealing with minority issues is particularly inadequate: for example, the Ministry for Human and Minority Rights includes less than 10 professionals, the National Coordinator for the Implementation of the “Roma Inclusion Decade” is a one-person institution attached to the Ministry of Health, Labour and Social Care. The Advisory Committee is fully aware that one of the recurrent general challenges for newly independent Montenegro is to build-up its administrative capacity. This will require the setting up of adapted recruitment procedures, the training of new staff, as well as staff in place. Against this background, the Advisory Committee recommends that the authorities carefully analyse the issue of capacity (both in terms of personnel and material resources) to fully implement and monitor its own legislation and policies in the field of national minority protection and provide the necessary support to this effect.

99. The Advisory Committee notes that a promising tool for increasing the participation of persons belonging to national minorities in public and cultural life lies with the establishment of the minority councils as foreseen in the 2006 Minority Law (Articles 33 to 35). According to the said Law, these councils are given competences in the fields of education, culture, representation of national minorities in public administration at the central and local levels, land, urban as well as budget planning at the local level. They may submit proposals regarding the development of minority rights, suggest amendments to a law or launch a procedure to oppose a law that is deemed to violate their rights.

100. The Advisory Committee notes that the Minority Law specifies that the state authorities and other competent bodies are obliged to reply to the requests of the minority councils within 30 days. It welcomes the fact the Rules of Procedure for the first election of these councils have now been adopted: they pave the way to the holding of the first electoral meetings. In the same way, the Advisory Committee notes with satisfaction that the Government established the fund for Minorities which should support the councils’ functioning and activities (see also Article 5 above).

101. The composition of such councils has been subject to debates, in particular with regard to the over-representation of members of Parliament as *ex-officio* members of these councils.<sup>26</sup>

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<sup>26</sup> See in particular Article 33 of the Law on Minority Rights and Freedoms:

“Minorities and persons belonging to them, in order to improve rights and freedoms of minorities, can establish the Council.

The minority can elect only one council.

The Council is elected to a four-year tenure.

The Council cannot comprise more than 17 members.

The Council shall comprise of: the members of parliament elected from the minority candidates list, members of the Government at the proposal of the candidates from that minority candidates list, mayors of municipalities in which the majority of the population belongs to the minority and other members of the parliament and Government, as well as mayors of municipalities from the respective minority who wishes to participate in the Council, presidents of minority parliamentary parties and presidents of the caucuses of the minority parties in local assemblies.

Other members of the Council shall be elected by secret ballot on the constitutive assembly of the minority concerned. “

This accentuates the trend to neglect civil society actors' input in decision-making on national minority issues.

102. The Advisory Committee finds it important that minority councils may act as a tool for the numerically smaller and more vulnerable communities, such as the Roma, to organise themselves and have their voice heard in the absence of parliamentary representation. The Advisory Committee is of the opinion that the election of the first Roma council should accommodate such concerns.

103. The Advisory Committee finds that the authorities should not see these councils as their exclusive interlocutors on minority issues. Although they are given specific status by the law, other relevant actors such as NGOs and associations of national minorities should also be encouraged to provide their contribution in the formulation, implementation and monitoring of Montenegro's national minority policy.

### **Participation at local level**

104. Decentralisation is at a very early stage in Montenegro. It is true that some measures have been taken to provide local authorities with more decision-making power on certain issues such as education but their implementation remains limited. The Advisory Committee highlights that decentralised or local forms of government have an important role in creating the necessary conditions for effective participation of persons belonging to national minorities in decision-making, including for the smaller and more vulnerable minorities such as the Roma. The Advisory Committee invites the authorities to strengthen further this process by providing all means, including financial ones for the decentralised entities to exercise their powers effectively.

### **Economic participation**

105. The Advisory Committee notes with concern that a significant number of persons belonging to national minorities face a particularly difficult economic situation. The Advisory Committee understands that the lack of transparency prevailing on the labour market and the alleged need to rely on personal connections as well as political party affiliation to find employment, may play their part in explaining such a situation, in addition to other social factors. The Advisory Committee notes in particular that the Roma are in a critical economic situation. While welcoming the fact that some initiatives have been taken with the constructive support of the Employment Agency, the Advisory Committee finds that comprehensive, co-ordinated and evaluated action to tackle the complexity of their situation remains to be developed. It is therefore imperative that the newly adopted National Strategy on Roma (see also related comments under Article 4 above) be fully implemented .

106. As regards the Bosniac/Muslim minority, its problems are, to a certain extent, due to the fact that a large number of persons belonging to this national minority are concentrated in economically depressed areas. The authorities started to address the issue by adopting a Regional Development Strategy for Montenegro in 2005 and the Advisory Committee expects that the existing development gap will be progressively reduced. Furthermore, the Advisory Committee invites the authorities to ensure that persons belonging to national minorities are fully involved



in the planning, implementation, monitoring and evaluation of policies affecting the economic fabric of the territory where they live in substantial number.

## **Article 16**

### **Territorial divisions and ethnic composition of the territorial units**

107. There has been some discussion on a draft law on territorial organisation some provisions of which would have an impact on the municipal boundaries and possibly on the ethnic composition of some municipalities. The Advisory Committee understands that this is a potentially sensitive issue which touches upon possible changes to the existing multiethnic municipalities. The Advisory Committee wishes to highlight that any future discussion on this topic should pay particular attention to the principles contained in Article 16 of the Framework Convention and would need to involve adequate consultation of persons belonging to national minorities.

## **Article 17**

### **Cross-border contacts**

108. The Montenegrin authorities have taken a positive approach to the issue of free contacts across borders for persons belonging to national minorities. The Advisory Committee notes in particular that some additional border crossing points have recently been opened in the South of the country in order to facilitate such contacts. The Advisory Committee encourages the authorities to pursue this approach.

## **Article 18**

### **Bilateral co-operation in the field of protection of national minorities**

109. The Advisory Committee welcomes the fact that Montenegro intends to conclude bilateral agreements with neighbouring countries with a view to complementing its instruments and mechanisms to protect national minorities. The Advisory Committee notes that the situation of those citizens who obtained another citizenship in addition to the Montenegrin one after 3 June 2006 raises serious concerns: Article 12 of the Constitutional Law for the implementation of the Constitution provides that these persons will not be allowed to keep their Montenegrin citizenship one year after the adoption of the Constitution i.e. after 19 October 2008, date by which a bilateral agreement will need to be concluded with the States from which the other citizenship was obtained. *De facto*, the persons concerned by this provision are the Serbs of Montenegro who have largely resorted to the possibility offered by the Serbian Law on Citizenship of October 2006 to acquire Serbian citizenship under facilitated conditions. As a result, their situation might become precarious. The Advisory Committee expects that the discussions on a bilateral agreement which are due to be launched shortly will enable a satisfactory solution to be found to their situation.

**Article 19**

110. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

#### IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE

111. The Advisory Committee believes that the main findings and comments set out below, could be helpful in a continuing dialogue between the Government and national minorities, to which the Advisory Committee stands ready to contribute.

##### **In respect of general remarks**

112. The Advisory Committee *finds* that Montenegro has launched a series of important reforms in the field of the protection of national minorities. The Advisory Committee *considers* that it is important that these reforms are completed according to the deadlines set and that the authorities ensure that there is adequate institutional capacity to secure their full implementation in practice.

113. The Advisory Committee *finds* that in newly independent Montenegro, expectations of persons belonging to national minorities are high and *considers* it important that the authorities give adequate attention to the needs of persons belonging to national minorities.

114. The Advisory Committee *finds* that there is a large number of displaced persons living on the territory of Montenegro, with many of them still having a temporary status and *considers* that this situation may eventually be of relevance for the implementation of the Framework Convention in Montenegro.

##### **In respect of Article 1**

115. The Advisory Committee *finds* that Montenegro committed itself to ratifying a number of treaties upon its accession to the Council of Europe, including treaties that are of relevance for the protection of national minorities such as the Revised Social Charter and citizenship-related Conventions. The Advisory Committee *considers* that Montenegro should follow suit on these commitments.

##### **In respect of Article 3**

116. The Advisory Committee *finds* that the definition of national minorities included in the 2006 Minority Law includes a citizenship requirement and *considers* that the authorities should remove this requirement from the said general definition and limit its application only to those provisions where it is relevant, such as provisions on electoral rights at national level.

117. The Advisory Committee *finds* that some minorities' identities have been fluctuating over time in Montenegro, and that the lack of clarity regarding the future status of Montenegro at the time when the national census was carried out, may have had an impact of the self-identification of some national minorities. The Advisory Committee *considers* that the authorities should ensure that whatever the position taken by the persons concerned, the principle of self-identification with a national minority is duly respected.

#### **In respect of Article 4**

118. The Advisory Committee *finds* that the possibility to introduce positive measures is now included in the new Constitution of Montenegro and *considers* that legislation should now be harmonised accordingly.

119. The Advisory Committee *finds* that some non-discrimination provisions refer only to citizens and that they do not cover all relevant areas and *considers* that the authorities should take the opportunity of their on-going work on non-discrimination legislation to review the situation regarding the scope of application of this provision and ensure that all fields are covered.

120. The Advisory Committee *finds* that there is insufficient knowledge on the institution of the Protector of Human Rights in Montenegro as well as its potential role in the field of national minority protection and *considers* it important that this institution is made more accessible to persons belonging to national minorities and is provided the means to operate effectively with all guarantees for the independence of its work.

121. The Advisory Committee *finds* that the situation of Roma in a number of fields, notably in the fields of housing and education, is not in line with the principles contained in Article 4 of the Framework Convention. The Advisory Committee *considers* that their situation merits to be addressed urgently in the context of the recently-adopted Strategy on Roma.

122. The Advisory Committee *finds* that a large percentage of Roma still do not possess personal identity documents and *considers* that the authorities should redouble efforts to provide assistance to accessing identity documents by the Roma.

123. The Advisory Committee *finds* that in Montenegro there is a general lack of data that is disaggregated by ethnicity, sex and geographical location and *considers* that the authorities should identify further ways and means of obtaining reliable statistical data.

124. The Advisory Committee *finds* that Montenegro lacks adequate legal guarantees for the protection of personal data and *considers* that the authorities should urgently revise their legislation on data protection to bring it in line with European standards.

#### **In respect of Article 5**

125. The Advisory Committee *finds* that at present, there is no satisfactory mechanism for providing State support to the cultures of national minorities. The Advisory Committee *considers* that the authorities should review the existing situation in order to make State support mechanisms more efficient and transparent. In so doing, the Advisory Committee *considers* that the authorities should effectively consult the minority councils as foreseen in the 2006 Minority Law.

126. The Advisory Committee *finds* that information on State financial support to cultural monuments by confession/belonging to a national minority is not complete and *considers* that the authorities should keep a record of the financial support provided to cultural monuments and that such information should be made available by the authorities to those who request it.

### **In respect of Article 6**

127. The Advisory Committee *finds* that inter-ethnic relations have remained peaceful in Montenegro at times when violent armed conflicts took place in the region. The Advisory Committee *finds* that cases of human rights violations of the Bosniac/Muslim minority in the region of Bukovica in 1992-1993 are pending before Montenegrin courts and *considers* that effective investigation should be conducted in those cases and perpetrators brought to justice should violations be confirmed.

128. The Advisory Committee *finds* that there is a lack of interest from certain national minorities to interact with other communities and there are indications that ethnic distance is on the rise in Montenegro. The Advisory Committee *considers* that the authorities should pay due consideration to measures which can promote interactions between the different ethnic groups living in Montenegro, especially in the fields of education, culture and media.

129. The Advisory Committee *finds* that there is a lack of information on national minorities available to the general public in the mainstream media and *considers* that the authorities should make the resources available for translation of minority language programmes into the official language as foreseen in Article 11 of the 2006 Minority Law.

130. The Advisory Committee *finds* that the allegations of torture of persons belonging to the Albanian minority in the so-called “Eagle Flight Operation” carried out in 2006 should be effectively investigated and perpetrators brought to justice in case violation is confirmed. The Advisory Committee *considers* that the authorities should ensure that the system of supervision of the police, recently created, be given the status and the means necessary to fulfill its task effectively and with all guarantees of independence.

131. The Advisory Committee *finds* that most of the displaced persons living on the territory on Montenegro have been given an *ad hoc* status so far and that, as a consequence, these persons have faced obstacles in having access to basic social rights. The Advisory Committee *considers* that this situation may negatively affect the implementation of Article 6 of the Framework Convention.

132. The Advisory Committee *finds* that despite the efforts made in recent years, there are still allegations that human trafficking, and its negative impact on persons belonging to national minorities, continues. The Advisory Committee *considers* that the authorities should take resolute action in the context of the newly adopted national anti-trafficking strategy to put an end to such a phenomenon.

**In respect of Article 8**

133. The Advisory Committee *finds* that the dialogue between the authorities and the religious authorities is reportedly not satisfactory and considers that the authorities should review the situation and make the necessary changes, including institutional changes, in order to step up this dialogue.

134. The Advisory Committee *finds* that a lack of designated premises to practice Islam has been reported at local level and it *considers* that the authorities should take steps in consultation with the religious communities concerned, to find a solution to this problem.

**In respect of Article 9**

135. The Advisory Committee *finds* that broadcasting of national minority programmes is considered insufficient at local level and *considers* that the authorities should review the situation in order to develop further programming in minority languages at local level.

136. The Advisory Committee *finds* that domestically-produced programmes are non-existent for national minorities other than the Albanian minority and *considers* that this situation calls for a greater involvement of journalists from national minorities in the production of education, cultural and other mainstream programmes.

137. The Advisory Committee *finds* that support to the press of national minorities should address the needs of all minorities.

**In respect of Article 10**

138. The Advisory Committee *finds* that further legal clarity is needed for the implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities and that the authorities should inform persons belonging to national minorities of their rights and make the necessary resources available to this end.

**In respect of Article 11**

139. The Advisory Committee *finds* that the names of persons belonging to the Albanian national minority have been altered upon registration and that there is still reluctance by the competent authorities to rectify the situation. The Advisory Committee *considers* that the authorities should ensure that, while completing the law on civil registers, the procedure to revert to the original names is followed in practice without any unnecessary complications and no additional costs for those concerned.

140. The Advisory Committee *finds* that the implementation of the right to display topographical indications in minority languages remains limited to a few areas. The Advisory Committee *considers* that the authorities should 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.

**In respect of Article 12**

141. The Advisory Committee *finds* that the authorities should pursue their efforts to revise textbooks in consultation with representatives of the national minorities.

142. The Advisory Committee *finds* that additional efforts are needed to address teacher training needs of persons belonging to national minorities.

143. The Advisory Committee *finds* that the possibility given by Montenegrin Law to schools authorities in co-operation with the local community to propose up to 20% of the curriculum in order to better reflect the needs of persons belonging to national minorities has regrettably, if rarely, been used in practice and *considers* that the authorities should consider the ways and means to promote this possibility and in so doing, ensure the involvement of the minority councils as well as other representatives of national minorities.

144. The Advisory Committee *finds* that the specific problems encountered by the Roma have been addressed mostly in an *ad hoc* way with no sustainable funding available. The Advisory Committee *considers* that the authorities should take decisive action, including in the context of the Strategy on Roma to address this situation.

145. The Advisory Committee *finds* that the specific arrangements made in order to facilitate the access of persons belonging to national minorities to higher education have been operating in a non-transparent way so far and *considers* that the authorities should further reflect on the possible ways to improve such access.

146. The Advisory Committee *finds* that the issue of non-recognition of diplomas from educational institutions abroad has been further addressed by the authorities and that a draft law on the validation of diplomas should be adopted soon.

**In respect of Article 14**

147. The Advisory Committee *finds* that there is some reluctance to introduce minority language education in those areas where national minorities constitute less than the majority of the population and *considers* that greater clarity is needed for the implementation of minority language teaching provisions.

148. The Advisory Committee *finds* that the teaching of Croatian, Bosnian and other minority languages is underdeveloped and that teaching in these languages when it exist is not integrated in the regular school curriculum. The Advisory Committee *considers* that increased efforts should be made, including with regard to minority language teaching, in order to cater for the needs expressed by the Croatian, Bosnian and other minorities concerned.

149. The Advisory Committee *finds* that the language needs of the Roma have received little attention so far and *considers* that the authorities should provide adequate support to the

implementation of the education provisions of the newly adopted Strategy on Roma, including as regards the learning of Roma language.

### **In respect of Article 15**

150. The Advisory Committee *finds* that the new Constitution of Montenegro lays down the right to “authentic representation” of persons belonging to national minorities and that there are currently discussions in Montenegro regarding measures that would ensure such a representation. The Advisory Committee *considers* that the authorities should approach the issue of authentic representation of national minorities with all due caution in order to avoid an excessive polarisation of politics along ethnic lines and the monopolisation of ethnic discussion by certain parties. The Advisory Committee *considers* the measures to be adopted in this field should not overlook the needs for representation of the smaller and more vulnerable minority groups such as the Roma.

151. The Advisory Committee *finds* that the new Constitution includes a right to “proportionate representation” of persons belonging to national minorities in the public services and *considers* 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.

152. The Advisory Committee *finds* that the implementation capacity within governmental structures often does not match the ambitious plans designed for minority protection and *considers* that the authorities should analyse this issue and take appropriate measures to enhance the implementation.

153. The Advisory Committee *finds* 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 *considers* that they should be adequately consulted together with other representatives of national minorities.

154. The Advisory Committee *finds* that decentralisation is at a very early stage in Montenegro and *considers* that the authorities should strengthen this process by providing appropriate means, including financial ones in order for the decentralised authorities to exercise their power, in particular with regard to education.

155. The Advisory Committee *finds* that shortcomings remain as concerns the effective participation of persons belonging to national minorities in economic life and *considers* that the initiatives to address these problems, including in the context of regional development plans, should be pursued decisively and in consultation with the national minorities themselves.

### **In respect of Article 16**

156. The Advisory Committee *finds* that there has been discussion on a draft law on territorial organisation which may affect the ethnic composition of some municipalities and *considers* that any future discussion on this topic should pay particular attention to the principles of Article 16.



**In respect of Article 17**

157. The Advisory Committee *finds* that Montenegro has taken some positive steps with regard to the issue of free cross border contacts by opening additional crossing points in the South of the country and *considers* that the authorities should pursue this approach.

**In respect of Article 18**

158. The Advisory Committee *finds* that the situation of those who obtained another citizenship in addition to the Montenegrin one after the independence of Montenegro, in particular the Serbs of Montenegro, is of serious concern. The Advisory Committee *considers* that discussions on a bilateral agreement on this issue should ensure that the situation is dealt with in a satisfactory manner.

**V. CONCLUDING REMARKS**

159. The Advisory Committee considers that the concluding remarks below reflect the main thrust of the present opinion and that they could therefore serve as the basis for the corresponding conclusions and recommendations to be adopted by the Committee of Ministers.

160. Montenegro has taken important steps for the protection of national minorities: it adopted a Constitution which includes a minority rights chapter reflecting the principles of the Framework Convention. The National Strategy on Roma was recently adopted; national minority councils are in the process of being established and a substantial fund for minorities was approved by the Parliament, paving the way for increased support in respect of their cultures. The Advisory Committee welcomes the political will of the authorities, and in particular the Ministry of Human and Minority Rights, to enhance national minority rights protection in Montenegro.

161. The adoption of more detailed legal guarantees together with the availability of adequate implementation and monitoring capacity are now needed to fully implement constitutional rights and policy documents. Legal provisions on the use of minority languages in the relations between persons belonging to national minorities and the administrative authorities need to be made more specific. Further efforts need to be made regarding the availability of minority language teaching as part of the school curriculum, including for the Bosniacs/Muslims and the Croats. The difficulties experienced by many Roma in various fields of life requires a vigorous implementation of the newly adopted National Strategy and an adequate monitoring of the progress made in this context.

162. The authorities should address citizenship in a way that secures full and effective equality for persons belonging to national minorities. Due attention should be paid to ensuring that there is no unjustified restriction to the personal scope of application of the Framework Convention, and that accessing fundamental rights for those whose legal status is currently unclear, in particular the Roma and the Serbs, is guaranteed.

163. While inter-ethnic relations have remained peaceful, on the whole, in Montenegro, interaction and dialogue need to be expanded among the different segments of society. Media

has an important role to play in this respect and efforts should be made to increase the availability of information on national minorities to the general public. Greater involvement of national minority journalists by editorial boards in the production of educational, cultural and other mainstream programmes is also encouraged.

164. The Advisory Committee considers that the implication of the constitutional right to “authentic representation” of national minorities in Parliament needs to be approached with all due caution so as to avoid any excessive polarisation of politics along ethnic lines and the monopolisation of discussions on national minorities by certain political parties.

165. The provision of the Constitution on “proportionate representation” of national minorities in public services needs to be made operational, notably by relying on data on the participation of persons belonging to national minorities and by catering for national minorities’ specific training needs to compete better for public posts.

166. Shortcomings regarding the effective participation of persons belonging to national minorities in economic life need to be addressed. National minorities should be closely involved in the implementation of regional development plans targeting economically-depressed areas where they live.