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

Second Opinion on Bosnia and Herzegovina, adopted on 9 October 2008

EXECUTIVE SUMMARY

Bosnia and Herzegovina has taken a number of measures to advance the implementation of the Framework Convention. Legislation on the protection of persons belonging to national minorities was adopted by the Federation and Republika Srpska. Further steps should nonetheless be taken to ensure that the existing legislation is fully implemented.

Persons belonging to national minorities continue to be included in the category of "Others", do not enjoy the same political rights as those belonging to the three constituent peoples and remain on the sidelines of public affairs. They still have low visibility within the society since the institutional system is focused on the interests of the three constituent peoples.

Commendable Action Plans for Roma housing, health and employment were recently devised with a view to advancing the implementation of the 2005 National Strategy for Roma. It is crucial that they are implemented without further delay as many Roma continue to face serious difficulties in the field of education, employment, housing and access to health care. Moreover, their possibilities to participate in decision-making processes are very limited.

In the field of education, there is a most worrying trend towards increased segregation of pupils along ethnic lines.

Consultative bodies for national minorities were set up in Republika Srpska and at the state level. It is important that these bodies be given adequate support so that they can effectively participate in the formulation of laws and policies.

Finally, it is regrettable that the Election Law was amended in a way that is likely to result in reduced possibilities for persons belonging to national minorities to be represented in local councils.

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

SECOND OPINION ON BOSNIA AND HERZEGOVINA

1. The Advisory Committee adopted the present Opinion on Bosnia and Herzegovina in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the State Report (hereinafter the State Report), received on 2 August 2007, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Sarajevo, Brčko and Banja Luka from 25 to 28 March 2008.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Bosnia and Herzegovina. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Bosnia and Herzegovina, adopted on 27 May 2004, and in the Committee of Ministers' corresponding Resolution, adopted on 11 May 2005.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Bosnia and Herzegovina.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Bosnia and Herzegovina as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.

I. MAIN FINDINGS

Monitoring process

6. Bosnia and Herzegovina has adopted a constructive attitude to the monitoring procedure under the Framework Convention. In December 2005, the authorities held a seminar on monitoring in Sarajevo, in which representatives of the national minorities and of the Advisory Committee participated. The aim was to examine how the findings made during the first cycle of monitoring could be acted upon in practice. The Advisory Committee's first Opinion and the Committee of Ministers' Resolution have been translated into one of the country's languages. The Advisory Committee, however, notes with regret that Bosnia and Herzegovina has not yet submitted proposals for experts in respect of Bosnia and Herzegovina to be elected on the list of experts eligible to the Advisory Committee.

7. The Advisory Committee also regrets that the State Report was submitted one year late. In order to prepare this second State Report, the authorities consulted a number of institutions and organisations. The contributions received from the Council of Ministers of Bosnia and Herzegovina, several cantonal authorities and NGOs, including the Association of National Minorities of Republika Srpska and the Roma Council of the Federation, are appended to the State Report. The Advisory Committee, nonetheless, notes that the authorities of the two Entities and of the Brčko District do not seem to have provided input for the report's preparation. While welcoming the inclusion of various stakeholders' contributions, the Advisory Committee requests that a more inclusive approach, which should be based on close co-operation between central, Entity and local authorities, should be followed in subsequent monitoring cycles.

8. Apart from the above-mentioned contributions, the State Report mainly consists of replies to the questions raised by the Advisory Committee in January 2006 when the preparations for the second monitoring cycle were under way with the authorities of Bosnia and Herzegovina. The Advisory Committee's work could, nonetheless, have benefited from more detailed, up-to-date information on implementation of the various articles of the Framework Convention. During its visit to Bosnia and Herzegovina, the Advisory Committee was, however, able to supplement the information contained in the State Report. It had some very useful meetings with the national, Entity and local authorities and with national minority and NGO representatives in Sarajevo, Brčko and Banja-Luka.¹

Institutional and legislative framework

9. The initiatives launched in 2005-2006 with a view to reforming Bosnia and Herzegovina's Constitution, a legacy of the Dayton-Paris Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to as Dayton Agreement) of 1995, have so far come to nothing due to a lack of consensus among the parties concerned. Persons belonging to national minorities therefore continue to be included in the category of "Others", do not enjoy the same political rights as those belonging to the three constituent peoples and remain on the sidelines of public affairs. National minorities still have low visibility within society, since the institutional system is focused on the interests of the three majority communities (the constituent peoples). The Advisory Committee understands that the institutional arrangements provided for by the

¹ Bosnia and Herzegovina consists of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. The Federation is sub-divided into 10 cantons. There are 84 municipalities on the territory of the Federation and 63 in Republika Srpska. The town of Brčko and its pre-war municipal territory are organised as a separate administrative unit, the District of Brčko (Extract from the State Report of Bosnia and Herzegovina).

Dayton Agreement have been instrumental in restoring peace in the country as well as post-conflict rehabilitation. Yet, there is a need for moving from a system based on group rights towards a more balanced approach, that pays adequate attention to individual rights, in order to ensure long-term stability and social cohesion of the country.

10. The State Law on the Protection of Rights of Persons belonging to National Minorities of 2003 (Hereinafter: “the State Law on National Minorities”) was amended in October 2005. Some of its provisions have now been clarified, and others have been added, such as the possibility of introducing positive measures in favour of national minorities in the field of employment and the obligation to set up a Council of National Minorities.

11. So that the principles of the State Law on National Minorities can be applied in practice, it must be supplemented with similar legislation at Entity level. The Republika Srpska passed a Law on the Protection of Rights of Persons belonging to National Minorities of Republika Srpska (hereinafter: “the Law on National Minorities of the Republika Srpska”) in December 2004. In July 2008, the Federation of Bosnia and Herzegovina also adopted the Law on the Protection of Rights of Persons belonging to National Minorities of the Federation (hereinafter: “the Law on National Minorities of the Federation”).

12. A draft anti-discrimination law is also under preparation. This should make it possible to supplement the existing provisions on combating discrimination, notably on grounds of ethnic or national origin. It is important that civil society, including associations of national minorities, continue to be closely involved in the drafting process.

13. Generally speaking, it can be seen that, although Bosnia and Herzegovina has fairly well-developed legislation for the protection of national minorities, deficiencies in applying the law continue to pose a major problem.

14. Furthermore, a most worrying lack of communication and co-ordination between the different levels of authority regarding the implementation of the laws and policies on national minorities can be noted. With an institutional organisation as complex as that of Bosnia and Herzegovina, it is indeed difficult to implement decisions taken at central level. The Advisory Committee has, in particular, noted a worrying lack of communication between the authorities of the two Entities.

Intercommunity relations

15. Ethnicity continues to be a key factor in determining participation in public affairs and in the country's social, economic and cultural life, a situation which is not conducive to reinforcing social cohesion. The sense of belonging to a single country beyond ethnic and national dividing lines is lacking. In this context, the concept of "vital national interest" of the constituent peoples remains an obstacle to the smooth functioning of the institutions, apart from the fact that it prevents those who do not belong to the constituent peoples from making themselves heard.

16. Although tangible progress has been made in a number of regions, tensions still exist between the three main communities. Hate speech targeting persons on the basis of their ethnicity or religion is frequent in the media and in politics. Separation of pupils from the different communities within the education system continues and is apparently becoming widespread. The same applies to the media and politics, where ethnic divisions continue to prevail. Representation within elected bodies and the public sector is also based on individuals' ethnic origin.

17. The Roma are often the target of prejudice and racist rhetoric or even acts. Returnees also encounter various forms of hostility, especially where they do not belong to the local ethnic majority, although tensions have declined in a number of municipalities since 2004.

Equality and protection against discrimination

18. Persons belonging to national minorities suffer discrimination, endorsed by law, regarding their participation in public affairs, since they are still ineligible for appointment to certain posts, notably high-level ones. This, together with the maintenance of the "Others" category in the Constitution, is the main cause of discontent for persons belonging to national minorities. They informed the Advisory Committee that they feel political decision-makers often regard them as "second class citizens".

19. Persons not belonging to the ethnic majority, including members of national minorities, are frequently faced with discrimination in various fields, such as access to housing and to jobs, particularly in the public sector, social protection and retirement benefits.

Information and data on persons belonging to national minorities

20. The implementation of a number of legislative provisions concerning national minorities depends on minimum numerical thresholds, calculated according to the results of the 1991 census. However, the census figures no longer correspond to demographic realities in the country. It is accordingly difficult to apply the legislation in a manner that satisfies the current needs of persons belonging to national minorities. This makes it important that the authorities collect comprehensive reliable, up-to-date figures swiftly, while fully respecting international standards on the protection of personal data.

21. The authorities also do not have sufficient reliable, up-to-date data on the socioeconomic and educational situation of persons belonging to national minorities. Due to the lack of such data they have difficulties in devising, implementing and evaluating appropriate, effective policy measures in favour of national minorities.

22. Collection of data on the situation of Roma, provided for under the action plans for Roma in the employment, housing and health care sectors (see paragraph 24 below), should partially remedy the current dearth of information. It must be ensured that such data is collected in accordance with international standards regarding the protection of personal data.

The situation of the Roma

23. A large proportion of the Roma population continues to encounter serious difficulties in various areas of daily life. Many of them still do not have identity documents, since they were not registered at birth, and therefore have no welfare or medical cover. Few of the informal Roma settlements have been legalised since 2004, and living conditions there are frequently unhealthy. Roma participation in socioeconomic life remains generally very limited. In the field of education, despite efforts made, many Roma children still do not attend school. The school dropout rate continues to be very high, and illiteracy is still a major problem within the Roma population.

24. In view of this situation, the authorities have continued to develop policies to address the problems confronting the Roma in a number of fields. A National Strategy for the Roma was devised in 2005, followed by sector-based action plans to improve the employment, housing and

health care situation of Roma, drawn up in close co-operation with the Advisory Committee for Roma. The authorities should now focus on the rapid, effective implementation of the above-mentioned strategies in close contact with those concerned. They should thereafter also ensure that participative monitoring and evaluation of these Action Plans takes place.

25. Participation of the Roma at all levels of public affairs, as well as their representation in public service employment, remains extremely low. They are therefore an invisible part of society, even though they are facing challenges that should be high on the agenda of the authorities.

Visibility of national minorities' languages and cultures

26. Persons belonging to national minorities, and their cultures and languages, have low visibility, be it in economic and social life, cultural matters or public affairs. Very few programmes are broadcast on subjects of relevance to national minorities or in their languages, despite the provisions of the State Law on National Minorities requiring that public service radio and television channels broadcast such programmes.

27. The cultural heritage, history and languages of the national minorities are virtually absent from school syllabuses and textbooks.

28. The law also provides that, under certain conditions, it shall be possible to make use of minority languages in relations with the administrative authorities and also on topographical and other information signs. These provisions have not been applied so far and the authorities have not assessed the needs of the persons belonging to national minorities for such facilities.

Teaching in/of minority languages

29. There is currently no teaching in the national minorities' languages, although the State Law on National Minorities allows it under certain conditions. The possibilities for teaching of national minority languages within the school system are also limited at present. However, the demand for it exists among persons belonging to the national minorities, since language learning in school is important so as to safeguard the national minorities' languages and cultures.

30. It can also be seen that there is a shortage of appropriate educational material for teaching minority languages and of teachers trained in these languages. A substantial share of the educational opportunities on offer is attributable to the efforts of the associations of national minorities, who receive only limited, sporadic support from the authorities in this respect.

Participation

31. A Council of National Minorities was set up in April 2008 at national level. It should allow persons belonging to the national minorities to play a greater part in policy-making, especially regarding matters of prime concern to them. A similar council was established in 2007 in the Republika Srpska, and it is important that such a council be established in the Federation as soon as possible. The authorities should now seek to ensure that these councils are fully able to participate in the formulation of laws and policies, particularly in matters affecting national minorities. The councils should also be involved in any future discussions on reform of the institutions and the Constitution.

32. In view of the municipal elections in Autumn 2008, amendments to the Election law were adopted in April 2008, that lower the threshold required for candidates from national minorities

to take part in elections. Nevertheless, they introduce a new requirement for persons belonging to national minorities to form at least 3% of the population of a given municipality (according to the 1991 census results) in order to benefit from a reserved seat in the local assembly of the municipality concerned. Very few municipalities, however, meet this requirement according to the 1991 census and the representation of persons belonging to national minorities in local assemblies is, therefore, likely to be even lower than it could have been according to the Election law, as amended in 2004.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Scope of application

Findings of the first cycle

33. In its first Opinion, the Advisory Committee noted that the personal scope of application of the Framework Convention was limited to citizens only, according to the State Law on National Minorities and invited the authorities to consider the inclusion of persons belonging to other groups, including non-citizens, following consultation with those potentially concerned.

Present situation

Outstanding issues

34. The Advisory Committee notes that the scope of the term “national minorities” continues to apply only to citizens of Bosnia and Herzegovina. This position is reinforced by the inclusion of the same criterion in legislation on national minorities at the level of the Entities, i.e. the Law on National Minorities of the Republika Srpska of 2004 and the Law on National Minorities of the Federation, which was adopted in July 2008.

35. In the process of dialogue with the Advisory Committee, the authorities expressed no readiness with regard to an extension of the scope of application of the Framework Convention to non-citizens. The Advisory Committee would like to recall that State Parties should, as part of the implementation of the Framework Convention, promote mutual respect, understanding and co-operation among all persons living on their territory, including, where appropriate, non-citizens.

36. In addition, the Advisory Committee stresses the fact that citizenship requirements can have a negative impact on those persons whose legal status is still unclear as a result of the upheavals that have occurred in the region. This is particularly relevant in the case of the Roma, who often face difficulties in obtaining confirmation of their citizenship, notably because of a lack of personal documents (see also remarks in respect of Article 4 hereinafter). The Advisory Committee is of the opinion that the difficulties met by Roma without a clear legal status in such circumstances should be duly taken into account by the authorities when considering the scope of application of minority rights, including the provisions of the Framework Convention as well as domestic provisions.

Recommendations

37. The Advisory Committee invites the authorities to pursue a flexible approach with regard to the scope of application of the Framework Convention, in line with the report of the Venice Commission on Non-Citizens and Minority Rights,² and to consider, as appropriate, its application to groups other than those recognised in the State Law on National Minorities.³

² See Venice Commission Report on Non-Citizens and Minority Rights, adopted on 15-16 December 2006, (CDL-AD (2007)1).

³ See Article 3 of the Law on the Protection of Rights of Persons belonging to National Minorities of 2003: “Bosnia and Herzegovina shall protect the position and equality of persons belonging to national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians (...)”.

38. The Advisory Committee calls on the authorities to address as a priority the problems faced by those Roma and other persons belonging to national minorities whose legal status remains uncertain.

Persons belonging to the constituent peoples in a minority situation

Findings of the first cycle

39. The Advisory Committee considered, in its first Opinion, that persons belonging to a constituent people who live in areas where they do not belong to the majority could be given the possibility to rely on the protection of the Framework Convention, as an additional tool to respond to some specific needs.

Present situation

40. The Advisory Committee welcomes the fact that extensive information on discrimination and related problems (such as higher unemployment rate, difficult access to pension rights, etc) experienced by persons belonging to constituent peoples in a minority situation was brought to its attention in the State Report and during the Advisory Committee's visit to Bosnia and Herzegovina. From discussions it had with some representatives of the constituent peoples, the Advisory Committee also understands that persons belonging to these groups would not object to being able to benefit from the protection of the Framework Convention, as an additional tool to address problems of discrimination they are facing, without this implying a weakening of their status as constituent peoples.

Recommendation

41. The Advisory Committee invites Bosnia and Herzegovina to consider further applying the Framework Convention to persons belonging to constituent peoples in a minority situation, on a case-by-case basis and in close consultation with those concerned. Furthermore, it urges the authorities to ensure that the Partial Decision of the Constitutional Court of Bosnia and Herzegovina of 30 June and 1 July 2000 is fully implemented (see also remarks under Article 4 below).

National minorities in the Constitution

Findings of the first cycle

42. In its first Opinion, the Advisory Committee highlighted the problems connected with the use of the term "Others" at the constitutional level to refer to national minorities and hoped that the terminology used in the State Law on National Minorities would be introduced at the constitutional level as well.

Present situation

a) Positive developments

43. The Advisory Committee welcomes the fact that both the Republika Srpska Law and the Federation law on minorities consistently use the term "national minorities" instead of "Others".

b) Outstanding issues

44. At the constitutional level, no changes were introduced with regard to the use of the terms "Others". Representatives of the national minorities that the Advisory Committee met during its visit reiterated the view expressed in earlier stages of monitoring under the Framework

Convention that this terminology is offensive. Furthermore, they consider that it entails their exclusion from public affairs and society as a whole. Moreover, there continue to be divergent interpretations of the scope of the term “Others”, which can also be understood as covering all those not wishing to be associated with one of the constituent peoples, including persons who do not belong to national minorities (see also remarks in respect of Article 15 below).

Recommendation

45. The authorities should consider introducing, at the constitutional level, more adequate terminology to refer to national minorities, drawing on the terminology used in the State and Entities laws on national minorities, in order to put an end to their exclusion from public affairs.

Right to self-identification

Findings of the first cycle

46. In its first Opinion, the Advisory Committee was concerned that the ethnicity of individuals was very often openly referred to in daily life in Bosnia and Herzegovina, in particular in the context of access to political posts and public service jobs, without providing adequate safeguards of the right to be treated or not to be treated as a person belonging to a given ethnic group and without ensuring that no disadvantage will result from this choice.

47. Furthermore, the Advisory Committee stressed that a future general population census should make questions relating to ethnic or national affiliation optional and that possibilities offering neutral entries, such as “Bosnian” should be considered.

Present situation

Outstanding issues

48. While recognising the importance of the availability of data on ethnic origin (see comments in respect of Articles 4 and 15 below), the Advisory Committee recalls that the right to be treated or not to be treated as a person belonging to a given ethnic group, as contained in Article 3 of the Framework Convention, should be fully respected and that personal data should be protected, in line with relevant international standards. Against this background, it notes that mentioning the ethnicity of individuals continues to be very frequent in Bosnia and Herzegovina, notably to access political posts and public employment. The Election Law in particular still requires from candidates for certain posts that they declare their ethnic affiliation (see also remarks in the first Opinion of the Advisory Committee in this respect), which is problematic from the point of view of Article 3 of the Framework Convention. Even though the Advisory Committee understands that this largely results from the system established under the Dayton Agreement, which helped to end the armed conflict, it is deeply concerned by this situation.

49. Moreover, the provisions of the Election law adopted in 2008 allowing for the representation of national minorities in local councils and assemblies (see also remarks under Article 15 hereinafter) provide for special lists of candidates representing persons belonging to national minorities. The appointment of candidates can be made by national minority organisations or political parties, according to specific requirements contained in the Law. However, some interlocutors of the Advisory Committee fear that this provision may be abused by political parties representing the majority population, which might propose candidates for positions reserved for national minorities that are not recognised by persons belonging to minorities as such, as has happened in the past.

50. The Advisory Committee regrets that the introduction of new, more neutral entries, such as “Bosnian”, in future population census is considered by the authorities as counterproductive and impossible to implement. Yet, it is still of the opinion that adequate options should be offered to persons who do not wish to associate with one of the constituent peoples or a national minority. It is important that this issue be widely discussed in society. Furthermore, options for recording the ethnic identity of persons during the next census or any other data collection campaign should be considered in close co-operation with representatives of national minorities. Identification with one ethnic group must, in any case, be optional (see also comments in respect of Article 4 below).

Recommendations

51. The Advisory Committee calls on the authorities to ensure that adequate guarantees for the protection of personal data be provided in the legislation and that the existing legislation be amended, as appropriate. The authorities should also take resolute measures to ensure that, in practice, the right to self-identification, as set out in Article 3 of the Framework Convention, be fully respected.

52. The authorities should consider ways and means to avoid limiting possibilities for self-identification with affiliation with one of the constituent peoples or with a national minority. They should also encourage a debate in the society at large on this subject.

Article 4 of the Framework Convention

Legislation to combat discrimination and existing remedies

Findings of the first cycle

53. In its first Opinion, the Advisory Committee underlined the need for a comprehensive anti-discrimination legislation that protects individuals from discrimination by both public authorities and private entities.

54. The Advisory Committee called on the authorities to pay increased attention to the lack of implementation of decisions issued by human rights institutions, and notably the Ombudsman institutions.

Present situation

a) Positive developments

55. The Advisory Committee welcomes the fact that a comprehensive anti-discrimination legislation is being prepared and should be submitted to the Parliamentary Assembly of Bosnia and Herzegovina before the end of 2008. Such a law should complement the existing anti-discrimination provisions and make remedies more accessible. It notes with particular interest that civil society organisations have been involved in the preparation of the first drafts of the law.

56. The Advisory Committee is pleased to note that the existing human rights Ombudsman institutions (the Federation and Republika Srpska Ombudsman Offices) have continued to play a

very active role in protecting individuals against discrimination, even though they are currently undergoing a process of restructuring and centralisation.⁴

b) Outstanding issues

57. Representatives of civil society, including minority organisations, have expressed fears that their involvement in the preparation of the anti-discrimination law might be limited now that the Gender Equality Agency has been entrusted with preparing a final draft of the anti-discrimination law for submission to the parliamentary procedure, and that their previous contributions to the process of elaboration of the law might be overlooked.

58. The Advisory Committee notes with deep concern that many of the persons it met during its visit, including among the authorities, stressed that non-implementation of existing laws, including provisions prohibiting discrimination, was a major problem in the country.

59. While welcoming the very important role played by the existing Ombudsman institutions in protecting citizens against discrimination, notably persons belonging to the constituent peoples in a minority situation, the Advisory Committee deeply regrets the fact that their decisions and recommendations often continue not to be properly and swiftly implemented by the authorities. This lack of implementation is undermining the effectiveness of these institutions, which provide one of the main remedies for human rights violations in Bosnia and Herzegovina.

60. Furthermore, it appears that very few complaints have been brought to the attention of the Ombudsman, in the Federation and in Republika Srpska, by persons belonging to national minorities, the majority of the cases put forth being by persons belonging to constituent peoples in a minority situation. This situation might result from the fact that persons belonging to national minorities, and notably the Roma, lack awareness of their rights, of existing remedies and/or confidence in the judicial system as a whole.

61. In the process of reform of the Ombudsman institutions, it is important not to lose the expertise developed by the existing Ombudsman institutions and to ensure that the reformed structure will continue to benefit from the high degree of confidence achieved by the existing Ombudsman institutions in the population. The Advisory Committee believes that the fact that the Entities' Ombudsman institutions have managed so far to act as unified institutions, beyond ethnic divides, has greatly contributed to enhancing confidence of the population in them.

Recommendations

62. The Advisory Committee encourages the authorities to complete without delay the process of adoption of a comprehensive anti-discrimination law, in close co-operation with representatives of civil society. The law to be enacted should foresee the setting up of a transparent and independent system of monitoring of discrimination and ensure that remedies to discrimination are available and accessible.

63. The Advisory Committee urges the authorities to find ways of ensuring that the decisions of the Ombudsman institutions be promptly and fully implemented. Furthermore, emphasis should be put on raising awareness on human rights and on existing legal remedies to

⁴ The existing Ombudsman institutions should have been unified in a single, State level institution, by 1 January 2007. However, at the time of the preparation of this Opinion, this process had not been completed.

discrimination instances, especially among the most disadvantaged groups of the population, including the Roma.

64. It is also important to ensure that the new State level Ombudsman institution will have the expertise, the institutional capacity and the resources to play its role effectively as an independent remedy for human rights abuses, accessible to all citizens irrespective of their ethnic origin.

Discrimination in access to political posts

Findings of the first cycle

65. In its first Opinion, the Advisory Committee noted with concern that existing rules governing the composition of some State and Entity level authorities were such as to legally exclude persons belonging to national minorities from accessing certain political posts. It called on the authorities to find ways and means of remedying the total exclusion from such posts of persons belonging to national minorities and, in some instances, persons belonging to the constituent peoples (e.g. Serbs living in the Federation and Croats or Muslims living in Republika Srpska). It invited the authorities to consider amending the Constitution of Bosnia and Herzegovina, as well as the Entities' Constitutions.

Present situation

a) Positive developments

66. The Advisory Committee notes with interest that negotiations were launched in 2005 among the main stakeholders and political parties on the reform of the Constitution. It hopes that they will be resumed soon and will result in better functioning institutions and in effective equality for persons belonging to national minorities.

b) Outstanding issues

67. The Advisory Committee is concerned about the fact that persons belonging to national minorities and often persons belonging to one of the constituent peoples living in the Entity of which they are not citizens, continue to be legally barred from accessing a number of political posts (including *inter alia* the tripartite Presidency of Bosnia and Herzegovina, the existing Ombudsman posts and positions in the unified Ombudsman institution to be set up)⁵. Neither are national minorities represented in the House of Peoples of the Parliament of Bosnia and Herzegovina, as a result of the existing rules which provide for equal representation of the constituent peoples but exclude persons belonging to national minorities (see also remarks in respect of Article 15).

68. These forms of discrimination against persons belonging to national minorities, which are set out in the legislation, raise issues of compatibility with the principles of Article 4 of the Framework Convention. The legitimate objective of ensuring fair and balanced representation of the constituent peoples should not result in excluding from political representation those who do not belong to the constituent peoples, and in particular, persons belonging to national minorities, as spelled out by the Venice Commission in its Opinions of March 2005 on the constitutional

⁵ The Law of 2006 on the State Ombudsman Institution foresees that persons belonging to the category of "Others" can apply for the positions of State Ombudsman. However, the law also says that the institution is to be composed of three ombudsmen, to be selected from the three constituent peoples.

situation in Bosnia and Herzegovina and the powers of the High Representative, and of April 2006 on the draft amendments to the Constitution of Bosnia and Herzegovina.⁶

Recommendation

69. The Advisory Committee urges the authorities to pursue efforts to reform the Constitution, with a view to eliminating discrimination against persons who do not belong to the constituent peoples and to enabling them to participate effectively in public affairs (see also remarks in respect of Articles 3 and 15).

Civil registration, access to health care, social protection and employment

Findings of the first cycle

70. In its first Opinion, the Advisory Committee expressed deep concern at the numerous forms of discrimination against Roma, in areas such as access to health care, social protection, employment and housing. It highlighted, in particular, the fact that many Roma lacked personal identity documents, including birth certificates and documents attesting citizenship.

Present situation

a) Positive developments

71. The Advisory Committee notes with satisfaction that measures were taken between 2004 and 2006 to remedy the lack of civil registration for many Roma. These efforts resulted in improvements of the situation. The measures aimed, *inter alia*, at raising awareness of hospitals' administrations so that they systematically issue birth certificates to all new-born children, at encouraging local authorities to be more proactive in solving civil registration problems and at raising awareness of the Roma on the importance of being duly registered.

72. The Advisory Committee is informed that the Ministry of Health of the Federation is currently preparing a "health care and insurance package" aimed at extending health insurance coverage to those who "fall through the net", among which many Roma. Moreover, it welcomes the plans to lift, for those persons who move into a new municipality, the 30-day deadline for registering with the Employment Service, bearing in mind that registration with the Employment Service gives access to health insurance.

73. The Advisory Committee is pleased to note that in the Brčko District, adequate health and social protection is available.

74. The Advisory Committee welcomes the fact that specific Action Plans for improving Roma health and employment have been designed and should be approved soon by the Council of Ministers, according to information received by the Advisory Committee. These Action Plans on health and employment are part of a package of three sectoral strategies (in the fields of health, employment and housing, see also remarks below concerning housing), designed to translate the 2005 National Strategy for the Roma into concrete action. It is also a condition for Bosnia and Herzegovina to become a participating State of the Decade of Roma Inclusion.

75. The Advisory Committee notes with interest that the implementation of the Action Plans should start with the setting up of databases on the health and employment situation of the

⁶ See Venice Commission documents DL-AD (2005) 004 and CDL-AD (2006) 019. See also the case *Sejdić and Finčić v. Bosnia and Herzegovina*, pending before the European Court of Human Rights (app. Nos. 27996/06 and 34836/06).

Roma, as up-to-date and reliable information is currently lacking. In so doing, it expects that the collection, processing and storage of personal data will be in line with international standards in the field of personal data protection (see also remarks on data collection in paragraphs 95 to 100 below). The Advisory Committee also expects that sufficient resources (financial and human) will be allocated for these Action Plans to be implemented effectively.

76. The Advisory Committee welcomes the introduction, through the 2005 amendments to the State Law on National Minorities, of the possibility to implement positive action measures in favour of the employment of persons belonging to national minorities, in particular in the public service (see also remarks in respect of Article 15 below).

b) Outstanding issues

77. The Advisory Committee notes with deep concern that, despite some improvements (see paragraph 71 above), instances of non-registration of Roma at birth, including in hospitals, continue to be reported. Registration problems also persist for those children who were born at home as well as for those children whose parents lack identity documents (see also remarks in respect of Article 3 above). This often results from the fact that many Roma cannot afford to cover hospital fees and late registration of birth fees.

78. Moreover, the registration and acquisition of personal documents require the presentation of a birth certificate not older than 6 months, a condition difficult to meet for those who were born abroad (notably as a result of the war) or for asylum seekers from Kosovo (see also remarks in respect of Article 6 below). It was reported to the Advisory Committee that the local authorities are often too passive in solving problems connected with civil registration.

79. Registration with the Employment Services is, in Bosnia and Herzegovina, a condition for accessing health insurance for those who are not regularly employed. Roma being largely unemployed, they very much depend for accessing health insurance, and consequently health care, on registration with the Employment Agencies. The latter, in turn, require that the beneficiary has proper identity documents and residency registration. As mentioned above, a number of Roma do not have identity documents and/or sometimes lack residency registration because they live in informal settlements (see paragraphs 88 and 89 below). As a result, many of them are *de facto* excluded from health care and social welfare.⁷ The Advisory Committee is deeply concerned by this situation.

80. The Advisory Committee notes with concern that, despite the current lack of statistical information disaggregated by ethnic or national affiliation (see also remarks in paragraphs 95 to 100 below), information available indicates that Roma continue to be largely excluded from the formal employment sector. This is due to a combination of lack of education and skills among Roma and prejudices by employers and the society at large. Furthermore, the Roma have often no access to the existing forms of public support to promote inclusion in the labour market because of social exclusion and lack of information.

81. According to information provided *inter alia* by the Ombudsman institutions, large numbers of returnees belonging to the constituent peoples who have taken residence in an area where they do not belong to the majority group also face discrimination in accessing health care, social protection and pension rights. This is largely due to the lack of harmonisation of social protection, health and pension schemes between the Entities and Cantons. Furthermore, these

⁷ See also the United Nations Development Programme (UNDP) report: "At Risk: Roma and the Displaced in Southeast Europe", Bratislava, 2006.

persons often face barriers in accessing employment as, in Bosnia and Herzegovina, employment is reportedly often conditioned by ethnic or political affiliation. The Advisory Committee is deeply concerned by the situation.

Recommendations

82. The authorities should take more resolute measures to solve the remaining cases of non-registration of births and of lack of personal identity documents among the Roma population. Adequate monitoring of the situation in this field should be carried out and the local authorities should be made more aware of the need to address these problems as a matter of urgency.

83. The Advisory Committee invites the authorities to pursue efforts aimed at ensuring universal and non-discriminatory access to social insurance. Particular attention should be paid to ensuring that persons belonging to disadvantaged groups, among which many Roma, have effective access to health care and social welfare. Resolute measures should also be taken to promote recruitment to the labour market on a non-discriminatory basis, irrespective of the ethnic origin of the applicants (see also remarks in respect of Article 15 hereinafter).

84. It is crucial to ensure that the implementation of the Action Plans for Roma Health and Employment (and Housing, see remarks below) start as soon as possible, that sufficient human and financial resources be allocated to it, that implementation be effectively coordinated among the various levels of authorities involved and adequately monitored and evaluated.

Access to adequate housing and property restitution

Findings of the first cycle

85. In its first Opinion, the Advisory Committee expressed concern about the housing situation of Roma, especially those residing in settlements that have not been legalised and are, therefore, vulnerable to forced evictions.

Present situation

a) Positive developments

86. The Advisory Committee understands that projects have been implemented in some Roma settlements to address the legal status and, in some cases, to improve the housing conditions and access to public utilities. It was also pleased to learn, during its visit, that the Brčko District authorities have satisfactorily solved the problems connected with the legal status of one settlement⁸ and have granted the Roma inhabitants with legal occupancy rights.

87. The Advisory Committee welcomes the elaboration of a Roma Housing Action Plan, in addition to the above-mentioned Health and Employment Action Plans. It expects that the implementation of this Action Plan will compensate for the current lack of systematic policy to improve the housing situation of the Roma.

b) Outstanding issues

88. The Advisory Committee understands that restitution of properties, as part of the return process, has been a long and complex course, which is now almost complete. Yet, the Advisory Committee notes that Roma returnees have reportedly experienced more difficulties than other

⁸ Reference is made to the Prutače settlement, in which Roma have been residing without legal entitlement since 2001, see also the Advisory Committee First Opinion on Bosnia and Herzegovina.

returnees in claiming pre-war possessions, although the situation seems to vary according to the municipalities. This is especially true for those who cannot provide legal entitlements for their pre-war accommodation because they lived in informal settlements or in social housing that was destroyed. Moreover, reconstruction of destroyed Roma properties has allegedly been slower than for other groups of the population and the authorities have sometimes not been very responsive to Roma requests for return of possessions or rehabilitation of damaged housing.

89. As a result, the housing situation of many Roma remains, on the whole, very difficult and is a matter of deep concern. Despite efforts made by some local authorities, often with the support of international organisations and NGOs, a large number of informal settlements remain, whose inhabitants are extremely vulnerable to forced evictions and are usually not provided with adequate alternative accommodation plans. Additionally, many of these settlements lack basic infrastructures (sewage system, water and electricity, paved roads, etc) and the living conditions are often substandard.

90. The lack of legal entitlements, sometimes coupled with the lack of personal documents, as well as the overall absence of data on the housing situation of Roma, results in many Roma being “invisible” in the eyes of the authorities. There are no coordinated public policies to improve their housing conditions. Furthermore, the Advisory Committee finds that the lack of clear allocation of responsibilities to solve Roma housing problems between the various layers of administration is particularly disconcerting.

Recommendations

91. The Advisory Committee urges the authorities to start implementing the Roma Housing Action Plan swiftly in order to compensate for the current lack of a concerted and systematic policy in this field. Adequate financial resources should be made available for the implementation of this Action Plan by the local authorities. In this context, particular attention should also be paid to finding adequate ways of legalising existing informal settlements.

92. In particular, the authorities should take steps to allow Roma to regain the possessions they held before the armed conflict and guarantee security of tenure to inhabitants of Roma settlements.

93. Resolute measures should be taken without further delay to improve the living conditions in the Roma settlements, notably by ensuring that basic utilities are available, and to ensure that their housing needs are, in general, considered by the authorities on an equal footing with those of the majority population.

94. Forced evictions without an offer of adequate alternative accommodation should be immediately discontinued.

Data collection and population census

Findings of the first cycle

95. In its first Opinion, the Advisory Committee regretted the lack of up-to-date official information on the numbers of persons belonging to national minorities, in particular as far as Roma are concerned, as this lack of information was an obstacle to the design, implementation and monitoring of policies to promote their full and effective equality.

Present situation

a) Positive developments

96. The Advisory Committee welcomes the efforts made by the authorities to collect up-to-date information on the situation of the Roma, as part of the implementation of the Action plans on employment, health and housing (see remarks above).

b) Outstanding issues

97. The Advisory Committee observes that the implementation of many of the legislative provisions concerning national minorities depends on thresholds to be established according to the figures of the 1991 population census (see also remarks in respect of Articles 3, 10, 11, 14 and 15). However, this data no longer corresponds to the demographic reality of the country, including regarding the numbers of persons belonging to national minorities. This is especially true for the Roma, as a large proportion of them was internally displaced or took refuge abroad during the conflict. A number of provisions in favour of national minorities are, therefore, difficult to implement.

98. Furthermore, the lack of accurate figures on the size of national minorities hampers the design of targeted policies and measures for persons belonging to national minorities (see also remarks in respect of Article 4 above concerning the situation of the Roma).

99. The Advisory Committee understands that the organisation of a new population census had to be postponed until further progress was made in the process of return of refugees and displaced persons. Yet it is of the opinion that there is an acute need for new, up-to-date data, especially on national minorities. This could be obtained by different means, including a future population census (see also remarks in respect of Article 3 above).

Recommendation

100. The authorities should pursue their efforts to collect comprehensive additional up-to-date and reliable data, especially on persons belonging to national minorities, while ensuring full respect for personal data protection.⁹

Article 5 of the Framework Convention**Legislation on national minorities***Findings of the first cycle*

101. In its first Opinion, the Advisory Committee expressed deep concern about the lack of implementation of the State Law on National Minorities, notably the lack of adoption of legislation at Entities' level and the lack of financial appropriations for translating the Law into practice.

⁹ See for instance the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and the Committee of Ministers Recommendation (97) 18 on the protection of personal data collected and processed for statistical purposes.

Present situation

a) Positive developments

102. The Advisory Committee welcomes the adoption of the Law on Minorities of Republika Srpska in December 2004, whose aim is to transpose the State Law on National Minorities at the level of Republika Srpska. Similarly, it is pleased to note the adoption, in July 2008, of the Federation Law on Minorities.

b) Outstanding issues

103. All representatives of national minorities that the Advisory Committee met during its visit underlined the lack of political will on the side of the authorities to implement the existing legislation on national minorities (see also remarks under Article 15). They highlighted the lack of resources allocated for this purpose, most of the available resources being allocated to meet the needs of the constituent peoples. They also regretted the absence of clear distribution of responsibilities between the various levels of government, of a coordinated approach between the State, the Entities and local authorities and, eventually, of strategies to support national minorities at the local level. The Advisory Committee is deeply concerned by this situation.

104. Additionally, the Advisory Committee is of the opinion that there is a need for further weight to be given to the State level authorities in minority policy-making. The Ministry for Human Rights and Refugees acts as a coordinating body but lacks a mandate and resources to ensure that the existing legislation is effectively implemented.

Recommendation

105. More resolute and practical measures are needed to advance the application of the State and Entities' legislations on national minorities. Moreover, there is an acute need for coordination between the various levels of authorities to ensure a consistent implementation of the law. Regular monitoring of the implementation of the law should be carried out.

Support for national minority cultures

Findings of the first cycle

106. In its first Opinion, the Advisory Committee noted the general lack of positive action and support for activities aimed at preserving and promoting the culture of national minorities, as well as the difficulties facing national minority associations in coordinating their activities in the context of the complex institutional structure of the country.

Present situation

a) Positive developments

107. The Advisory Committee notes with satisfaction that the 2004 Law on National Minorities of Republika Srpska stipulates that the Council of National Minorities should be involved in decision-making on allocation of funds for national minorities' associations.

108. The Advisory Committee notes with interest that the Government of Brčko has reportedly earmarked funds for the implementation of the National Strategy for the Roma in the main relevant sectors of the Government action. It has also provided funding and premises for the setting up of a Roma community centre which, according to the information received, is not yet operational.

109. The Government of Republika Srpska has increased its support for national minorities from 50 000 KM to 100 000 KM in 2008, which is a welcome development in view, notably, of the needs of the sizeable Roma community. The municipality of Banja Luka has continued to support national minority associations. The Advisory Committee also notes that this city provided national minority organisations with premises and that it hosts a yearly cultural event gathering all national minorities.

110. The Advisory Committee was also informed during its visit that some support for Roma organisations' activities continues to be allocated in parts of the Federation, such as the Zenica-Doboj Canton and Mostar.

b) Outstanding issues

111. Despite measures taken by some municipalities and cantons to support national minorities and their organisations, the support provided for national minorities in order to preserve and develop their culture remains on the whole very limited. Moreover, it is in most cases allocated on an *ad hoc* basis, despite the legal obligation for the State, the Entities, Cantons and municipalities to earmark funds in their respective budgets to support the activities of minority associations.¹⁰ Funding for activities carried out by Roma organisations appears to be particularly insufficient. Minority representatives that the Advisory Committee met claimed that the current lack of support for their activities reflects the limited commitment of decision-makers towards the preservation of minority cultures and languages and the fact that most resources are allocated to meet the needs and interests of the constituent peoples.

112. Additionally, the Advisory Committee was informed that, although funds for projects are usually allocated by means of public tenders and calls for projects, information on access to funds is lacking among minority communities. This lack of information and awareness of existing support possibilities has a particularly negative impact on Roma communities, which often lack means and capacities to access information. Moreover, consultation with national minority representatives when allocating support appears to be often missing.

Recommendations

113. More substantial support should be allocated, on a regular basis, by the various levels of authority for the national minorities in order to enable them to maintain and develop their cultural heritage and language.

114. The Advisory Committee calls on the authorities to ensure that persons belonging to national minorities are adequately informed of existing opportunities to receive support. National minority representatives should be more consistently involved in decision-making concerning the allocation of support.

¹⁰ The State Law on National Minorities, as amended in 2005, the laws on National Minorities of Republika Srpska and of the Federation, entail an obligation to earmark specific funds in the budgets of the State, Entities, Cantons, towns and municipalities for national minorities' associations.

Article 6 of the Framework Convention

Tolerance and community relations

Findings of the first cycle

115. In its first Opinion, the Advisory Committee noted that the country remained largely characterised by the existence of three ethnically-based political orders leaving little space for those who cannot or do not want to be associated with one of the constituent peoples. It also observed that the acceptance of “Others” was not sufficiently developed in the society of Bosnia and Herzegovina. It called on the authorities to make further efforts to develop intercultural dialogue, mutual understanding and co-operation among all persons living in the country, irrespective of their ethnic origin.

116. The Advisory Committee also emphasised the need for increased efforts to address war crimes and to investigate the fate of missing persons in order to eliminate the lack of trust between communities.

Present situation

a) Positive developments

117. The Advisory Committee was pleased to learn during its visit in the Brčko District that the area, which concentrated a high level of tensions after the war, is now characterised by a good level of integration and peaceful community relations. Pupils go to integrated schools, where they receive *inter alia* human rights education, as part of a Council of Europe project.

118. The Advisory Committee appreciates the fact that the War Crimes Chamber, established in 2005, has substantially contributed to handling domestic war crime cases. Further progress has, in general, been achieved in this respect, although local courts are facing a heavy backlog of cases and lack resources to deal with war crime cases.¹¹ Progress in this field is a crucial element in the process of reconciliation in Bosnia and Herzegovina.

119. The Advisory Committee welcomes the authorities' decision not to expel asylum-seekers from Kosovo, the majority of whom are Roma, following the expiry, in September 2007, of the temporary admission scheme.

b) Outstanding issues

120. The Advisory Committee deeply regrets the fact that the country continues to be divided along ethnic lines and that the sense of being a citizen of Bosnia and Herzegovina, rather than belonging to one of the constituent peoples, does not seem to have developed since 2004. On the contrary, nationalistic rhetoric seems to have dominated the 2006 electoral campaign and to be, in general, a dominant feature in the political discourse. This is not conducive to building peaceful relations and a climate of mutual understanding between various groups.

121. Furthermore, it is worrying that the so-called “two schools under one roof” continue to exist in the Federation (see also remarks in respect of Article 12 below). It seems to indicate that segregation of individuals according to their ethnicity in many areas of life is a persisting trend. The Advisory Committee was not informed of any measures launched by the authorities to

¹¹ The War Crimes Chamber can select the cases it wants to prosecute (the ones that it considers as “highly sensitive”), the other cases being handled by the cantonal and district courts.

overcome segregation and to promote better understanding between different ethnic and religious groups in general.

122. The so-called “Others”, and notably persons belonging to national minorities, continue to report that they feel ignored, excluded and that there is no space for them to participate in public affairs and in social, economic and cultural life. This “invisibility” is reflected *inter alia* in the quasi-absence of references to the history, cultural heritage and languages of national minorities in textbooks and other teaching material, as well as in their scarce presence in the media.

123. Against this background, the Advisory Committee hopes that attempts to reform the Constitution will yield results in the not too distant future, which will lead to the elimination of discrimination against persons who do not belong to the constituent peoples. More generally, there is a need to move from a system based on identification with dominant groups and group rights to a more balanced approach, in which individual human rights and citizens’ rights prevail.

124. The Advisory Committee regrets that religious instruction does not seem to involve teaching of the history and culture of religions, which would contribute to a better understanding and tolerance between the various communities from an early age. Moreover, the Advisory Committee was informed that the manner in which religious instruction is organised can lead to further schooling segregation of pupils of different religious background.¹² It notes for instance that having classes of religious instruction in the middle of the school day is a problem for pupils whose religion is not taught or pupils who have no religious affiliation. In such a context, the Advisory Committee finds it disconcerting that religious instruction was introduced at the level of preschool education. In general, it is concerned by the reported growing tendency, in public discourse, to associate ethnicity and religious affiliation, which can lead to religious intolerance and increased tensions in society.

125. The Advisory Committee notes with concern that persons having obtained refugee status in Bosnia and Herzegovina, mostly Roma from Kosovo, are faced with many difficulties in obtaining access to adequate housing and to employment. In addition, the Advisory Committee was informed that for many refugees who have purchased property, it remains difficult to have their ownership legally registered. Additionally, the Advisory Committee notes that many Roma from Kosovo have failed in their attempts to obtain refugee status and continue to live in Bosnia and Herzegovina under a temporary admission scheme, in precarious conditions. A satisfactory response to the refugees’ needs in terms of access to rights, as well as to the asylum seekers with respect to their legal status, is still lacking. This can result in a worsening socio-economic situation for these persons, their further marginalisation, as well as increased intolerance of society against them.

Recommendations

126. The Advisory Committee urges the authorities at all levels to take more resolute measures to promote intercultural dialogue and mutual understanding between the different ethnic groups and to foster a sense of being citizens of a common country. The authorities should also take resolute measure to combat religious intolerance. It recalls that such measures are indispensable to restore trust and further advance reconciliation in the country.

¹² See also on this issue the Supervisory Order “Protecting Freedom of Religion with respect to the Conduct of Religious Education and the Employment Status of Teachers of Religion in Brčko District Public Schools”, passed on 13 August 2008 by the Brčko District Supervisor.

127. The authorities should urgently consider ways and means to foster wider acceptance of national minorities in society, notably by eliminating all forms of legal and institutionalised discrimination against persons considered as “Others” and by enabling national minorities to be more visible, in particular in the media, and in school textbooks.

128. The Advisory Committee calls on the authorities of Bosnia and Herzegovina to take effective measures so as to guarantee improved access to fundamental rights for refugees and to continue seeking means of granting asylum-seekers, in particular Roma from Kosovo, a clear legal status.

Return process

Findings of the first cycle

129. In its first Opinion, the Advisory Committee was concerned by the fact that hundreds of thousands of persons had not returned to their pre-war residence, despite achievements in this field. Among obstacles to returns, it highlighted discriminations facing minority returnees in the field of employment, access to social rights and education, as well as sometimes an atmosphere of hostility triggered by local politicians.

130. The Advisory Committee expressed deep concern at demonstrations of hostility and sometimes violence against Roma returnees and at the frequent instances of looting of Roma properties, which discouraged many of them to exercise their right to return.

Present situation

a) Positive developments

131. The Advisory Committee welcomes the significant efforts and achievements made in recent years to implement and accelerate the process of returns. According to the State Report, 1 014 340 persons had returned at the date of issuing the State Report (July 2007), 45% of which are so-called “minority returns”. The process of restitution of properties was almost entirely completed by 2006.

132. The Advisory Committee welcomes the fact that acts of violence against minority returnees have, reportedly, been on the decrease and it was pleased to learn about successful reintegration experiences in some municipalities, such as Doboje or Brčko.

b) Outstanding issues

133. Despite the significant progress mentioned above, the Advisory Committee deplores the fact that many returns appear not to be sustainable and in fact, consisted mainly in repossession of properties, not followed by lasting resettlement of the returnees. Moreover, it notes with concern that relations between minority returnees and the majority communities continue to be difficult in some areas and that politicians keep on using nationalistic rhetoric, often directed against minority returnees. Minority returnees are also facing multiple and widespread forms of discrimination, which are an obstacle to the development of lasting harmonious interethnic relations (see also remarks in respect of Article 4 above).

134. The Advisory Committee was informed, *inter alia* by the Ombudsman institutions, that, although acts of mass hostility or direct ethnically-motivated violence have decreased, instances

of peer violence have been reported at school among pupils with different ethnic backgrounds. Moreover, hate crime seems to often take the form of attacks on persons because of their religious belief. The police do not classify ethnically-motivated crimes as such and systematic monitoring of the situation in this field is lacking.

Recommendations

135. The Advisory Committee urges the authorities to redouble efforts to combat all forms of hostility directed at “minority returnees”, whether they belong to one of the constituent peoples or to national minorities, in particular Roma (see also recommendations under Article 4 above). It invites the authorities to condemn firmly all manifestations of intolerance and ethnically-motivated hostility in the political sphere.

136. Systematic monitoring of hate crime should be undertaken and the police should be trained to detect and classify adequately ethnically-motivated violence and hate crime.

Representation of national minorities in the media

Findings of the first cycle

137. In its first Opinion the Advisory Committee regretted the general tendency of the media to neglect issues affecting national minorities and to focus on matters of interest to the constituent peoples.

138. It also noted that some media spread prejudice against the Roma, Albanians or persons who, while belonging to one of the constituent peoples, are in a minority situation. Lastly, it expressed satisfaction at the creation of the Press Council with responsibility for monitoring the print media.

Present situation

a) Positive developments

139. The Advisory Committee welcomes the adoption by the Communications Regulatory Agency (CRA), in 2008, of a Code of Good Practice for Television Broadcasters. It also takes note of the work of the CRA in monitoring racist or biased reporting in the electronic media. The Agency has reprimanded certain media outlets for spreading prejudice concerning a community or for having unduly disclosed that persons in the news were of foreign nationality.

140. The Advisory Committee welcomes the decision taken by the Press Council on 11 June 2008 recommending *inter alia* that journalists refrain from disclosing the ethnic origin of offenders or persons suspected of having committed an offence, especially where they are under age. This recommendation was issued in response to a complaint lodged with the Press Council by the Roma Council about the fact that certain newspapers had disclosed juvenile delinquents' Roma origins.

141. The Advisory Committee also welcomes the work done by certain NGOs to improve the image of Roma in the media and to facilitate access to the media professions for persons originating from this community

b) Outstanding issues

142. The Advisory Committee was informed that some media outlets frequently disclose the ethnic identities of suspects or presumed offenders, in particular where they are of Roma origin

(see paragraph 139 above). In addition, prejudices and stereotypes concerning this community continue to be propagated in the media. The Advisory Committee regards this as a matter of concern.

143. The Advisory Committee also notes that the principal media continue to be divided along ethnic lines. In addition, it seems that some politicians use the media to spread hard-line nationalist ideas and rhetoric, which is not conducive to the emergence of a climate of tolerance. The Advisory Committee notes with concern that there is a tendency for some political figures' attempts to stir up hostility between communities to take the form of attacks on persons on account of their religious affiliation.

144. Lastly, it can be seen that the principal media continue to provide only minimum coverage of issues of relevance to the national minorities. In addition, the Communications Regulatory Agency has so far received no complaints from persons belonging to national minorities (virtually all the complaints of inciting hatred or of proffering insults have originated from members of the constituent peoples), which may mean that such persons are unaware of the existing supervisory mechanisms or do not utilise them. It was only very recently that the Press Council first had to deal with ethnicity-related issues following the referral of the case mentioned in paragraph 140.

Recommendations

145. It is important to ensure that the media supervisory bodies and the complaints systems concerning potential cases of racism or of inciting hatred are known to the public and easily accessible. In particular, the Advisory Committee invites the authorities to take the necessary steps so that the Communications Regulatory Agency is in a position to continue its regular, effective, independent monitoring of the activities of the media.

146. Cases of dissemination of stereotypical ideas and hate speech should give rise to appropriate measures and incitement to ethnic or religious hatred should be prosecuted, so as to prevent such breaches in the future. Due attention should be paid to the existing codes of ethics of media and journalists.

Article 9 of the Framework Convention

Application of the State Law on National Minorities in the field of the media

Findings of the first cycle

147. In its first Opinion the Advisory Committee regretted that the new possibilities afforded by the State Law on National Minorities had in practice had little effect on the participation and representation of national minorities in the media. It encouraged the Communications Regulatory Agency to pay more attention to implementation of Article 16 of this law, requiring public radio and television stations to broadcast weekly programmes in minority languages.

Present situation

a) Positive developments

148. The Advisory Committee notes with satisfaction that the public television channel of Republika Srpska continues to broadcast a one-hour programme on national minorities every week. It also notes that a number of radio programmes in the Roma language exist at local level (for example in Tuzla or Kakanj).

149. The Advisory Committee welcomes the Communications Regulatory Agency's initiative of setting aside, for a five-year period and free of charge, a radio frequency for programmes concerning national minorities or in minority languages.

150. The Advisory Committee takes note of the efforts made by NGOs to provide journalism training for members of the Roma minority, with the authorities' backing.

b) Outstanding issues

151. The Advisory Committee notes that the public-service media are generally still failing to fulfil their obligations under the State Law on National Minorities, as amended in 2005. In particular, it is to be regretted that the Federation's public television station does not regularly broadcast programmes concerning national minorities and has stopped retransmitting the programme shown on the Republika Srpska's public television channel on national minorities (see paragraph 148 above). The Advisory Committee also notes that no minority-language programmes exist on public television channels.

152. A number of the persons with whom the Advisory Committee held discussions during its visit pointed out that it is difficult for persons belonging to national minorities to seize the few opportunities they are offered for broadcasting programmes in minority languages or about national minorities because of a lack of resources and of trained media professionals within their communities and, in general, of scant interest and support on the part of the media. In particular, no use has reportedly yet been made of the frequency made available to national minorities free of charge by the Communications Regulatory Agency. In addition, the Advisory Committee is concerned to note that the 2005 Law on the Public Broadcasting Service does not reiterate the provisions of the State Law on National Minorities. In addition, the broadcasting law merely mentions the need for adequate representation of the "Others" category with no form of reference to the needs of persons belonging to national minorities.

Recommendations

153. The Advisory Committee urges the authorities to take determined measures to ensure that the public radio and television stations fulfil their obligations regarding the broadcasting of programmes intended for persons belonging to national minorities and in minority languages. It is important that the Communications Regulatory Agency pay increased attention to application of the legislation in this sphere.

154. The Advisory Committee invites the authorities to seek means of enabling effective access to the media for persons belonging to national minorities, *inter alia* through vocational training.

Article 10 of the Framework Convention

Use of minority languages

Findings of the first cycle

155. In its first Opinion the Advisory Committee criticised the numerical threshold to be met before minority languages can be used in relations with the administrative authorities, as laid down by the State Law on National Minorities. It deemed that this threshold was too high to allow a response to the potential needs of persons belonging to national minorities in this area and hoped that the authorities would reconsider it.

Present situation

a) Positive developments

156. The Advisory Committee welcomes the fact that the Law on National Minorities of the Republika Srpska allows municipalities where persons belonging to national minorities are traditionally resident but do not constitute an absolute or relative majority of the population the possibility of taking steps to permit the use of minority languages in relations with the authorities, without applying a minimum threshold.

157. The Advisory Committee also notes with interest that the Federation's Law on National Minorities includes a similar provision, stipulating that municipalities where persons belonging to national minorities do not constitute the majority of the population may take measures to permit the use of minority languages in relations with the authorities. The Advisory Committee hopes that municipalities traditionally inhabited by persons belonging to national minorities will make use of this provision so as to permit the use of these languages, where a demand exists. Use of minority languages in relations with the administrative authorities is indeed an important means of enhancing the visibility of persons belonging to national minorities and, into the bargain, contributes to the preservation of these languages.

b) Outstanding issues

158. The Advisory Committee takes note of the amendment made in 2005 to Article 12 of the State Law on National Minorities, eliminating the need for a national minority to constitute an "absolute or relative" majority of the population in order to have the possibility of using its language in relations with the administrative authorities. The law now states only that it is necessary for persons belonging to national minorities to form a "majority" of the population to be able to use their language. However, for municipalities that decide, in accordance with Article 12 of the Law on National Minorities, to permit use of minority languages in relations with the administrative authorities, even where persons belonging to these minorities do not constitute a majority of the population, a minimum threshold of one-third of the local population is still required. The Advisory Committee considers that this requirement in practice impedes the use of minority languages, including in areas traditionally inhabited by persons belonging to national minorities. It also underlines the requirement that the legislation in force be applied solely on the basis of the results of the 1991 census makes its implementation very haphazard on account of the considerable changes that have taken place since 1991 (also see the comments in respect of Article 4 above).

159. During its visit the Advisory Committee was informed that, in practice, minority languages are not used in relations with the administrative authorities. It would nonetheless be important for the authorities to assess the needs and demand for this facility in areas traditionally inhabited by national minorities. Where applicable, the Advisory Committee expects that the local authorities concerned will avail themselves of the provisions of the laws on National Minorities of the Republika Srpska and of the Federation allowing the introduction of use of minority languages in areas traditionally inhabited by national minorities, irrespective of the percentage of the population they represent.

Recommendation

160. The Advisory Committee invites the authorities to consult representatives of national minorities in the areas where they are traditionally settled so as to evaluate the needs and demand regarding use of minority languages in relations with the administrative authorities.

Where applicable, it strongly encourages them to utilise the legislations of the Republika Srpska and of the Federation making it possible to disregard the threshold required under the State Law on National Minorities, as amended in 2005.

Article 11 of the Framework Convention

Topographical information in minority languages

Findings of the first cycle

161. In its first Opinion the Advisory Committee regretted that the numerical threshold stipulated by law for the possibility of displaying street names and other topographical indications in minority languages in areas traditionally inhabited by national minorities was too high.

Present situation

a) Positive developments

162. The Advisory Committee welcomes the fact that the Law on National Minorities of the Republika Srpska permits municipalities traditionally inhabited by persons belonging to national minorities to disregard the threshold of one-third of the population for the display of street names and other topographical indications in minority languages. It also notes that the Federation's legislation on national minorities includes a similar provision.

b) Outstanding issues

163. The Advisory Committee takes note of the amendment made in 2005 to Article 12 of the State Law on National Minorities, eliminating the need for a national minority to constitute an "absolute or relative" majority of the population in order for it to be permissible to display the names of streets, institutions or other topographical signs in minority languages. As mentioned in paragraph 158 with regard to use of minority languages, the law now only requires that persons belonging to national minorities should constitute a "majority" of the population, for the display of topographical information in minority languages to be possible. However, for municipalities that decide, in accordance with Article 12 of the Law on National Minorities, to permit the display of topographical and other indications in minority languages even where persons belonging to these minorities do not constitute a majority of the population, a minimum threshold of one-third of the population is still required. The Advisory Committee continues to regard this threshold as too high, in the light of Article 11 of the Framework Convention. It also underlines that requiring that the legislation in force be applied solely on the basis of the results of the 1991 census makes its implementation very haphazard on account of the considerable changes that have taken place since 1991 (also see the comments in respect of Article 4 above). According to the information in the Advisory Committee's possession, none of the country's municipalities has so far displayed topographical indications in the national minorities' languages.

164. The Advisory Committee considers that the authorities should assess the needs and demand for such information among persons belonging to national minorities, so that the legislative provisions referred to in paragraph 163 above can be implemented by local authorities. It wishes to point out that displaying topographical indications in minority languages, in addition to the official language, in regions traditionally inhabited by national minorities, helps to enhance these persons' visibility, which, in the context of Bosnia and Herzegovina, can be seen to be particularly necessary.

Recommendation

165. The Advisory Committee invites the authorities to consult persons belonging to national minorities so as to assess the needs and demand regarding the display of topographical indications and other signs in minority languages. Where applicable, it strongly encourages them to use the legislation of the Republika Srpska and of the Federation making it possible to disregard the threshold required under the State Law on National Minorities, as amended in 2005.

Article 12 of the Framework Convention

Segregation in the school system

Findings of the first cycle

166. In its first Opinion the Advisory Committee called on the authorities to eliminate segregation of pupils by ethnic origin within the school system and, in particular, the so-called "two schools under one roof", with a view to promoting national reconciliation and social cohesion at all levels. It also deemed that it was crucial to speed up the efforts to implement a common core curriculum, notably to facilitate the integration of returnees' children.

167. The Advisory Committee also drew attention to the inadequacy of the measures to foster knowledge of the culture and history of national minorities.

Present situation

a) Positive developments

168. During its visit to Brčko the Advisory Committee was pleased to note that schools were more "integrated" in this district and that pupils from the different communities attended the same classes. It also notes with interest that application of the common core curriculum is better-developed in Brčko than elsewhere in Bosnia and Herzegovina.

169. The Advisory Committee notes that the work to remove offensive content from school textbooks has progressed, although it is not complete, and that some schools are making headway with teaching multiple views of recent history.

b) Outstanding issues

170. The Advisory Committee is deeply concerned about the continued existence of the so-called "two schools under one roof" in the Federation and the development of mono-ethnic schools in both Entities, which institutes *de facto* segregation of pupils by ethnic origin from the very beginning of their schooling. It is particularly disconcerted by the fact that neighbouring countries of Bosnia and Herzegovina are encouraging and supporting the setting up of mono-ethnic schools in certain areas where persons belonging to the same ethnic groups live (see also remarks under Article 17 below). The Advisory Committee also notes that the common core curriculum is not systematically implemented and that the political will to move towards an integrated education system is largely lacking. It can also be seen that the possibilities of participating in extra-curricular or leisure activities with children from other communities are limited.

171. In addition, the state-level education authorities do not have the means to enforce and monitor implementation of the legislation in this field, since the Entities and the Cantons have retained extensive powers in these matters. The outcome is a lack of co-ordination and oversight

of the measures taken by the different levels of authority. The Advisory Committee regards these developments as a matter of deep concern since they undermine the efforts to foster national reconciliation and could, in the long run, constitute a threat to social cohesion.

172. The Advisory Committee notes that the inclusion of elements of the history and culture of national minorities in the curricula, provided for by the State Law on National Minorities, as amended in 2005, has not progressed since its first Opinion, a fact deplored by the representatives of national minorities with whom the Advisory Committee had meetings. It notes that the only development in these matters is the preparation by the OSCE of a school textbook on national minorities. It hopes that the authorities will take resolute steps to distribute this textbook as widely as possible. In addition, the information obtained shows that there are still no possibilities of training teachers to teach the national minorities' languages and cultures. The national minorities accordingly continue to be "invisible" within the education system.

Recommendations

173. The Advisory Committee urges the authorities of the Entities and the Cantons to take far more determined measures to end segregation of pupils according to their national or ethnic origin, to promote multi-ethnic education and to impose more widespread application of the common core curricula.

174. The Advisory Committee calls on the authorities rapidly to make the history, culture and languages of the national minorities a component part of school syllabuses and to train teachers to inculcate knowledge of these subjects.

Roma in the education system

Findings of the first cycle

175. In its first Opinion the Advisory Committee expressed its satisfaction at the adoption of the Action Plan on the Educational Needs of Roma and Members of other National Minorities in Bosnia and Herzegovina (hereafter the Action Plan for the Education of Roma). It hoped that the plan's implementation would make it possible to overcome the many problems facing Roma with regard to access to education, notably poverty, the lack of identity documents, discrimination and verbal harassment, which *inter alia* resulted in low attendance and high dropout rates.

Present situation

a) Positive developments

176. The Advisory Committee welcomes the adoption, in October 2007, of a Law on Pre-School Education, which introduces pre-school education for all children and should therefore facilitate Roma children's integration into primary school.

177. It also notes that a number of municipalities have continued to take positive initiatives in connection with the implementation of the Action Plan for the Education of Roma. For example, the authorities of Brčko have earmarked a specific budget for the Action Plan's implementation and have created a post of Roma educational mediator. In 2005 the Canton of Tuzla adopted a series of practical measures to implement the Action Plan for the Education of Roma. Other municipalities have set up posts of Roma mediators in schools and have allocated a number of study grants to Roma students having reached the level of secondary or higher education. Lastly,

the committee notes that school textbooks are distributed free of charge to all pupils and that some municipalities provide meals for the children of families without resources.

b) Outstanding issues

178. Despite the progress made in implementing the Action Plan for the Education of Roma, the Advisory Committee notes with concern that inequalities in Roma access to education remain, as a result of which the school attendance figures continues to be low, dropout rates are high, particularly among adolescent girls, the Roma are very under-represented in secondary and higher education and, lastly, Roma illiteracy remains extremely high, particularly among elderly women.¹³ These problems are linked to poverty, geographical and social isolation, the lack of identity documents, discrimination and prejudice and hostile reactions within the school system itself. The Advisory Committee was also told that Roma parents sometimes enrol their children in schools catering for children with mental impairments because other Roma children already attend these establishments.

179. The Advisory Committee notes a general shortage of financial and human resources for the implementation of the Action Plan. In addition, there is a lack of co-ordination between the activities of the education and the social welfare sectors, resulting in inefficiencies in the implementation of programmes for the Roma. What is more, a number of the Advisory Committee's contacts drew attention to deficiencies in the monitoring and evaluation of the Action Plan's results. In particular, the Advisory Committee was alerted to the fact that good practices developed in certain municipalities, often by NGOs, are not disseminated elsewhere by the state authorities, which could assume the role of co-ordinator and information-provider in these matters. Some municipalities with Roma inhabitants had reportedly not even been informed of the Action Plan's existence.

Recommendations

180. The Advisory Committee invites the authorities resolutely to pursue their efforts to ensure the systematic implementation of the measures set out in the Action Plan for the Education of Roma, notably through the allocation of adequate funding. It is likewise essential to carry out regular monitoring of the Action Plan's application and an evaluation of the measures already taken.

181. It is important that the state authorities should assume in full their role of co-ordinator for the implementation of the Action Plan for the Education of Roma and verify that the various tiers of government are fully informed of their obligations in this field and that any positive projects and good practices are analysed with a view to being reproduced all over the country.

Article 14 of the Framework Convention

Teaching in/of minority languages

Findings of the first cycle

182. In its first Opinion, the Advisory Committee regretted that the provision of the State Law on National Minorities requiring that persons belonging to national minorities should constitute an absolute or relative majority in the municipality concerned might restrict the possibility of

¹³ Only 63% of Roma women in Bosnia and Herzegovina are literate while 82% of Roma men are literate, see "Vulnerable Groups in Central and South Eastern Europe", UNDP, Profile Bosnia and Herzegovina.

setting up classes receiving instruction in minority languages in areas traditionally inhabited by national minorities.

183. The Advisory Committee underlined the need to increase state support for the teaching of minority languages, in particular regarding the training and recruitment of teachers and the supply of school textbooks. It also encouraged the authorities to make more systematic provision for teaching of the Roma language in schools attended by Roma pupils and to develop programmes and train teachers with this aim in mind.

Present situation

a) Positive developments

184. The Advisory Committee notes the low threshold (of five pupils) set to open a class with teaching of a minority language (see also remarks in paragraph 185 below).

a) Outstanding issues

185. The Advisory Committee notes that the amendments made to the State Law on National Minorities in 2005 have not really relaxed the conditions to be met for teaching to be dispensed in minority languages. This is because the requirement that the minority should constitute an absolute or relative majority of the population of the municipality concerned has been replaced by the criterion that, to be able to ask to be taught in their language, pupils belonging to a national minority must form one-third or one-fifth (in the case of optional lessons) of the population of the school concerned.

186. The Advisory Committee notes that the Law on National Minorities of the Republika Srpska also contains an obligation to constitute an absolute or relative majority of the population of the municipality concerned, whereas the Federation's legislation on national minorities introduces the thresholds of one-third or one-fifth (for optional lessons). During its visit the Advisory Committee had occasion to note that there is currently no school in which instruction is dispensed in one of the national minorities' languages. Furthermore, there are no teaching materials for this purpose. It can therefore be seen that no use has been made of the flexibility introduced under Article 8 of the 2003 Law on Primary and Secondary Education, which prescribes that the languages and cultures of the national minorities shall be respected and accommodated within the school system to the greatest extent possible.

187. The Advisory Committee wishes to point out that, when evaluating whether there is sufficient demand for teaching in minority languages in accordance with Article 14.2 of the Framework Convention, the authorities should carefully consider the needs expressed by the national minorities. Moreover, they should have in mind the importance that teaching in minority languages can have, in areas traditionally inhabited by national minorities, for the preservation not only of these languages but also of the national minorities' cultural heritages.

188. Teaching of minority languages at schools is very rare. Opportunities for learning the minority languages through additional classes continue to exist in a number of municipalities (Prnjavor or Banja Luka, for example), but their further development and continued existence are jeopardised by a lack of financial resources and of teaching materials, since national minority organisations are often behind these initiatives, sometimes with the assistance of parent states. Nonetheless, the State Law on National Minorities, as amended in 2005, the law of the Republika Srpska and of the Federation and the Action Plan for the Education of Roma all require the authorities to make financial and human resources available to permit the teaching of

minority languages and impose an obligation on them to develop appropriate textbooks and provide teacher training.

189. The Advisory Committee was informed that, in the Republika Srpska, the associations of national minorities had taken stock of the classes in which the minimum threshold of five pupils, required to benefit from teaching of minority languages, was satisfied; however, their initiative had met with no response from the authorities. At the same time, there were very few possibilities of studying the Roma language in school, although a textbook existed for teaching of the language in the fourth year of primary school.

190. The representatives of national minorities with whom the Advisory Committee had discussions all voiced a desire for an extension of the possibilities of learning their minority language within school and their disappointment with the continuing lack of political will and support in this area. The Advisory Committee regrets the fact that the national minorities' languages are consequently virtually absent from the Bosnian education system, not least in regions traditionally inhabited by national minorities, despite the provisions contained in the Action Plan for the Education of Roma. This absence of the national minorities' languages, and their culture and history, from the school curriculum constitutes a threat to the preservation of these languages and further increases the "invisibility" of persons belonging to national minorities in Bosnia and Herzegovina (also see the comments in paragraph 187 above).

Recommendations

191. The Advisory Committee invites the authorities to take more resolute steps to develop teaching in and of minority languages in areas where persons belonging to national minorities are settled traditionally or in substantial numbers. It is important that a proper assessment be made of the needs and demand of persons belonging to national minorities in these matters.

192. The authorities should also give greater support to the efforts of persons belonging to national minorities to preserve their languages and cultures, in particular through school textbooks and other specific teaching materials.

Article 15 of the Framework Convention

Participation in public affairs

Findings of the first cycle

193. In its first Opinion the Advisory Committee welcomed the amendments to the Election Law introduced in 2004 so as to guarantee the national minorities reserved seats in municipal councils and assemblies and regretted the fact that these changes had been published in the Official Gazette too late for their entry into force in time for the elections of October 2006. It also regretted the abuses noted in the rare cases where persons belonging to national minorities had the possibility of being represented in elected bodies as members of the category "Others".

194. The Advisory Committee deplored the frequent impediments to the smooth functioning of institutions resulting from the constituent peoples' recourse to the concept of their "vital national interest", whereas persons belonging to national minorities were unable to invoke their own vital interests regarding the conduct of public affairs.

Present situation

a) Positive developments

195. The Advisory Committee welcomes the creation of two reserved seats for representatives of national minorities within the Assembly of the Brčko District. This measure constitutes an undoubted progress in the representation of national minorities within this region.

196. The Advisory Committee notes with interest that the Election Law, as amended in 2004,¹⁴ was further modified in April 2008 so as to introduce positive measures to promote the representation of national minorities in the elected municipal assemblies. Although it has reservations about some of the amendments introduced (see paragraph 197 below), the Advisory Committee welcomes the reduction in the threshold required for national minority candidates to be able to stand for election. It also notes with satisfaction that the Central Electoral Commission recently instructed the municipalities to amend their statutes so as to ensure their timely harmonisation with the Election Law, as amended in 2008, to allow the registration of national minority candidates and to establish reserved seats for national minorities where applicable.

b) Outstanding issues

197. Although it welcomes the willingness shown by the authorities to introduce a form of representation of national minorities, the Advisory Committee regrets the terms of the Election Law as amended in 2008, which are far more restrictive than the amendments to the same law adopted in 2004.¹⁵ Persons belonging to national minorities must now constitute more than 3% of the population of the municipality in question (according to the last census) to benefit from a reserved seat in the local assembly. Very few municipalities satisfy this criterion in the light of the results of the 1991 census, even if the persons belonging to the different national minorities are counted together. National minorities' representation within local assemblies will therefore be less widespread than would have been possible under the terms of the Election Law as amended in 2004. Furthermore, the Advisory Committee wishes to underline that the sole reliance on the results of the 1991 census to determine the proportion of persons belonging to national minorities cannot lead to fair representation of the latter in view of the considerable demographic changes that have taken place since 1991 (also see the observations in respect of Article 4 above).

198. The Advisory Committee also expects that the majority parties will not abuse the possibility of putting forward national minority candidates, as occurred in other circumstances.¹⁶

199. As already mentioned in respect of Article 4, the Advisory Committee deplores the continuing exclusion of persons belonging to national minorities from many political posts and

¹⁴ The amendments to the Election Law adopted in 2004 introduced the right for persons belonging to national minorities to elect their representatives in municipal councils and assemblies and for associations of national minorities to designate their candidates. At least one seat was reserved for national minorities in municipalities where they constituted less than 3% of the population based on the 1991 census and one or two seats where they constituted more than 3%. These amendments could never be applied in practice as this provision was inserted in the Election Law just a few hours before the deadline for submitting candidatures for the oncoming 2004 local elections expired.

¹⁵ Also see the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to Bosnia and Herzegovina's electoral law, (CDL-AD (2008) 012), Opinion No. 460/2007.

¹⁶ During past elections some majority parties exploited the imprecise nature of the "Others" category so as to put forward candidates who did not represent national minorities and thus took advantage of the seats that were in principle reserved for the representation of persons belonging to national minorities.

from elected assemblies, which raises problems of compliance with the principles of the Framework Convention, in particular those enshrined in Article 15.¹⁷ In addition, for lack of a revision of the Constitution, the impediments to the smooth functioning of institutions linked to the constituent peoples' use of the concept of their "vital national interest" subsist, as does the impossibility for persons belonging to national minorities to invoke, or even simply bring to the fore, their own interests *vis-à-vis* those of the constituent peoples. In this connection, the Advisory Committee greatly regrets the fact that minority representatives have so far not been involved in the discussions on reform of the Constitution initiated in 2005-2006.

200. The Advisory Committee notes with concern that, although the Roma are by far the largest national minority group and the group facing the most serious difficulties, their numerical importance compared to other national minorities is not taken into due account in terms of representation in public affairs. This lack of adequate representation, coupled with social exclusion, results in very limited opportunities for them to participate effectively in public life.

Recommendations

201. The Advisory Committee urges the authorities to take all the necessary measures, including legislative ones, to provide persons belonging to national minorities with real, effective possibilities of representation in municipal councils and assemblies. In particular, it invites them to ensure that the positive measures in favour of national minorities are not exploited by persons or groups who do not represent persons belonging to national minorities.

202. It is essential that national minority representatives should in the future be fully involved in any discussion on matters of public interest, notably in the context of the reform of the Constitution and the functioning of the country's institutions.

203. Particular attention should be paid to improving participation of the Roma in public affairs.

The Councils of National Minorities

Findings of the first cycle

204. In its first Opinion the Advisory Committee deplored the fact that the Council of National Minorities, which should have been established at state level as an advisory body of the national minorities, had not been set up, as required by the State Law on National Minorities. It also regretted the lack of similar councils at Entity level.

Present situation

a) Positive developments

205. The Advisory Committee welcomes the setting up, in 2007, by the Assembly of the Republika Srpska, of a Council of National Minorities in accordance with the Republika Srpska's Law on National Minorities. It notes that this Council has already submitted a number of proposals to the authorities and to the Assembly of the Republika Srpska, which have resulted in an increase in the budget earmarked for national minority activities in 2008.

¹⁷ Again see the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to Bosnia and Herzegovina's electoral law, (CDL-AD (2008) 012), Opinion No. 460/2007.

206. The Advisory Committee also welcomes the fact that the municipality of Tuzla has set up a Council of National Minorities although the Federation has still not established such a council at Entity level. It also notes that the municipal council of the city of Banja Luka includes a national minority representative.

207. The Advisory Committee expresses its satisfaction with the creation, in April 2008, of the Council of National Minorities at the Parliamentary Assembly of Bosnia and Herzegovina. The establishment of this advisory body had been pending since the adoption of the State Law on National Minorities. It notes with interest that the Council may participate in the work of the parliamentary committees on human rights and on the Constitution. It expects that this new body will have the financial and human resources it needs to function effectively and to have a real influence on public affairs.

208. Lastly, the Advisory Committee notes that the Advisory Committee for Roma, a joint body comprising representatives of the Roma and of the relevant ministries, established in 2003, has continued its work and, in particular, made a significant contribution to the preparation of the Action Plans for Roma in the areas of housing, health care and employment (also see the comments in respect of Article 4).

b) Outstanding issues

209. According to information received by the Advisory Committee during its visit, problems have arisen with the process of appointing national minority representatives to the state-level Council of National Minorities. The authorities reportedly chose to appoint certain representatives among the names put forward by the associations of national minorities without taking into consideration the predominant viewpoints within the minorities concerned. Moreover, only ten out of the 17 recognised national minorities have been able to appoint their representatives in the Council. The Advisory Committee reiterates that transparency in the process of establishing advisory bodies of national minorities is essential to inspire trust and guarantee the effective functioning of these bodies.¹⁸ It hopes that the Council will rapidly be in a position to adopt precise rules of procedure and a work schedule, and thus be able to play to the full its role of giving advice to the central authorities and providing the impetus for policies and activities as regards lower-level authorities.

210. While appreciating the fact that the Advisory Committee for Roma continues to function as a joint advisory body, with the support of the Ministry for Human Rights and Refugees, the Advisory Committee notes that the financial and human resources allocated to it are not sufficient for it to fulfil, in particular, its task of instigating, co-ordinating, monitoring and evaluating the implementation of the various action plans to improve the situation of Roma. Co-operation with other levels of authority, especially the Cantons, appears to be sporadic and this committee's influence on the activities of local authorities is fairly limited in practice.

Recommendations

211. The Advisory Committee urges the authorities to take all the necessary measures, including the allocation of financial and human resources, so that the newly elected state-level Council of National Minorities is able fully and effectively to play its role. The composition of the Council should also be completed without further delay.

¹⁸ See also the Advisory Committee's thematic commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, adopted on 28 February 2008, doc ACFC/31DOC(2008)001.

212. The Advisory Committee invites the authorities to increase the financial and human resources at the disposal of the Advisory Committee for Roma, so as to enable it to carry out effective co-ordination and monitoring of the implementation of the Action Plans for Roma in the fields of education, employment, health care and housing.

213. The Advisory Committee calls for the rapid creation of a Council of National Minorities of the Federation, as provided for in the Federation's Law on National Minorities.

214. The authorities should ensure that the process of appointing council members is conducted in a transparent manner and that clear, precise rules of procedure are established.

Participation in economic and social life

Findings of the first cycle

215. In its first Opinion the Advisory Committee pointed out that representation in the public sector of persons not belonging to the constituent people in the majority in a given region, including persons belonging to national minorities, was unsatisfactory. The same applied to these persons' participation in economic and social life.

Present situation

a) Positive developments

216. The Advisory Committee welcomes the provision of the law on minorities of the Federation which requires that the Federation, cantonal and municipal authorities take active measures to promote effective equality of persons belonging to national minorities in the socio-economic sphere.

217. The Advisory Committee notes that certain municipalities, in particular Tuzla and Zenica, have recruited Roma advisers among their staff.

b) Outstanding issues

218. The Advisory Committee is deeply concerned to note that representation in the public sector of persons not belonging to the community locally in the majority remains far lower than it should be in the light of the legislation in force. This applies in particular to persons belonging to national minorities, although both the State Law on National Minorities and the Federation Law require that they be represented in the public sector in accordance with the results of the most recent population census.

219. The information available also shows that most Roma remain on the sidelines of the country's social and economic life¹⁹ and that, apart from a few exceptions, the Roma are not represented within the civil service. The combination of lack of identity documents, substandard housing conditions, low educational achievements and inadequate access to health care results, for many Roma, in extreme poverty (see also the above comments in respect of Article 4). This situation is of deep concern.

¹⁹ According to the UNDP report « At Risk : Roma and the Displaced in Southeast Europe », 52% of the Roma between 15 and 55 were unemployed in Bosnia and Herzegovina in 2005. The unemployment rate for the majority population at that time was of 30% (UNDP, Bratislava, 2006).

Recommendations

220. The Advisory Committee urges the authorities to take resolute steps to eliminate the obstacles to fair representation of persons belonging to national minorities in economic and social life and especially in the civil service.

221. The Advisory Committee also urges the authorities to take further measures to improve the participation of Roma in socio-economic life. In doing so, the authorities should draw on the Advisory Committee's thematic Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs.²⁰

222. It is also crucial to ensure a swift implementation of the Action Plans for Roma Health, Employment and Housing and thereafter, establishing participatory monitoring and evaluation systems.

Article 17 of the Framework Convention**“Kin State” support***Present situation*

223. The Advisory Committee was informed by minority representatives during its visit that “kin state” support is crucial for a number of national minorities. Funding, cultural and teaching material as well as visits to the “kin-state” help them preserve their languages and cultural heritage.

224. The Advisory Committee, however, finds that the support provided by some neighbouring countries of Bosnia and Herzegovina raises concern since in some cases it has allegedly resulted in increased segregation of persons belonging to the constituent peoples along ethnic lines, notably through the setting up of mono-ethnic schools (see also remarks under Article 12 above).

Recommendation

225. The Advisory Committee invites the authorities to carefully consider the impact of support from abroad in education on the overall educational policies and, where appropriate, to review its educational policies, in order to ensure that they do not lead to further segregation along ethnic lines.

Article 18 of the Framework Convention**Bilateral agreements on national minority protection***Findings of the first cycle*

226. In its first opinion, the Advisory Committee regretted that Bosnia and Herzegovina had not concluded any bilateral agreement devoted to the protection of the languages of its national minorities. It encouraged the authorities to take new initiatives in this field.

²⁰ Advisory Committee's thematic commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, adopted on 28 February 2008, doc ACFC/31DOC(2008)001.

Present situation

a) Positive developments

227. The Advisory Committee welcomes the fact that Bosnia and Herzegovina is part of the newly established (February 2008) Regional Council for Cooperation, which establishes a new frame for co-operation in Southeastern Europe²¹. Co-operation on national minority policies in the region could develop as part of this co-operation framework in the future.

b) Outstanding issues

228. According to the information available to the Advisory Committee, no bilateral agreement devoted to the protection of national minorities has been concluded since 2004.

Recommendations

229. The Advisory Committee encourages the authorities to pursue co-operation at regional level on minority protection. It also invites them to step up efforts to conclude bilateral agreements on minority protection as these can contribute to the preservation of the development of minorities' cultures and languages.

²¹ The Council of Regional Cooperation is the successor of the Stability Pact for Southeastern Europe.

III. CONCLUDING REMARKS

230. The Advisory Committee considers that these concluding remarks could serve as a basis for the Conclusions and Recommendations to be adopted by the Committee of Ministers in respect of Bosnia and Herzegovina.

Positive developments

231. Since the adoption of the Advisory Committee's first Opinion, in May 2004, Bosnia and Herzegovina has continued to pay attention to the situation of persons belonging to national minorities. The State Law on the Protection of Rights of Persons Belonging to National Minorities of 2003 was amended in 2005 so as to include new legislative guarantees. Both the Federation and the Republika Srpska passed a Law on Protection of the Rights of Persons Belonging to National Minorities making it possible to apply the legislation on national minorities within the Entities. An anti-discrimination law is under preparation.

232. The process of the return of refugees and displaced persons has been pursued, and the restitution of property is virtually completed. Hostile reactions and acts of violence against returnees have diminished.

233. The Council of National Minorities at the Parliamentary Assembly of Bosnia and Herzegovina was set up in 2008. It should allow increased participation of the national minorities in law and policy making regarding matters concerning them. A similar council was set up in 2007 at the level of the Republika Srpska. The city of Tuzla also established a Council of National Minorities at municipal level.

234. Following the adoption, in 2005, of a national strategy for the Roma, the authorities have drawn up action plans to improve their situation in the fields of employment, housing and health care, with the active participation of the Advisory Committee for Roma. In this connection, the authorities plan to gather data on the socioeconomic situation of the Roma, so as to remedy the deficiencies of the existing data. They must now seek means of ensuring the prompt and effective implementation of these action plans, in close co-operation with all the stakeholders concerned.

235. Implementation of the 2004 Action Plan on the Educational Needs of Roma and Members of other National Minorities has continued; for example, some municipalities have established posts of Roma educational mediators.

236. In 2008, the authorities of the Republika Srpska doubled the budget allocated to national minority organisations for their activities aimed at preserving the minorities' cultural heritages. Some municipalities have also made similar efforts.

237. The authorities of the Brčko District now reserve two seats for representatives of persons belonging to national minorities within the District Assembly. In addition, amendments to Election Law adopted in 2008 have reduced the threshold for national minority candidates to be able to stand for election.

Issues of concern

238. Persons belonging to national minorities continue to be included in the category "Others" under the Constitution of Bosnia and Herzegovina, which makes them ineligible for a number of

high-level posts, to which only persons belonging to the three constituent peoples can be appointed. Politics and the media also function along ethnic or national dividing lines. The sense of belonging to a single country, beyond ethnic or national divisions, is still largely lacking.

239. Persons belonging to national minorities deplore the fact that, at all levels, there is a lack of political will to implement the existing legislation and take account of national minorities' needs and aspirations, since the interests of the constituent peoples remain the key focus of political decision-makers. Deficiencies in the implementation of laws and policies concerning national minorities are exacerbated by the lack of co-ordination between the different levels of governance within Bosnia and Herzegovina.

240. The Federation of Bosnia and Herzegovina has still not created a consultative body of the national minorities within the Entity.

241. The support granted by the authorities to national minority organisations with a view to preserving and developing the minorities' cultural heritage and languages remains limited and sporadic. School textbooks and syllabuses make virtually no mention of the national minorities' history and culture.

242. Discrimination against persons who do not belong to the ethnic group locally in the majority, including members of national minorities, is frequent. Such discrimination can be observed in the fields of employment, particularly public-sector employment, housing, and access to social protection and retirement benefits. The Roma are particularly affected by this phenomenon, aggravated in their case by their frequent lack of identity documents. Few "informal" Roma settlements have been legalised, and the living conditions of many Roma often remain unhealthy.

243. There is a shortage of reliable, up-to-date information on the number and circumstances of persons belonging to national minorities, with the main source of data being the census carried out in 1991. This deficiency constitutes a significant obstacle to the application of the legislation on national minorities and to the development and implementation of targeted measures to improve the situation of national minorities.

244. Hate speech targeting persons on account of their ethnic, national or religious affiliation remains frequent, particularly in politics. Roma in particular suffer from negative stereotypes, and the media often disclose the ethnicity of offenders or suspected offenders where they are of Roma origin. The segregation of pupils according to their ethnic or national origin also persists within the country through the system of "two schools under one roof" or the existence of separate schools.

245. Amendments made to the Election Law in 2008 raised the threshold allowing persons belonging to national minorities to benefit from a reserved seat within local assemblies to 3% of the population of a given municipality. Previously, they had a reserved seat even where they constituted less than 3% of the population.

246. The languages of the national minorities are scarcely present in Bosnian public affairs and cultural life. They are not used in relations with the administrative authorities, and topographical signs in minority languages do not exist, despite the legislation on the subject. There are very few radio or television programmes in minority languages, including in the public-service media. Lastly, the possibilities of learning minority languages in school are limited.

Recommendations

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

- Consider the possibility of introducing, in the legal order, new terminology to be used to refer to persons belonging to national minorities;
- Complete the adoption of the anti-discrimination law at national level in close co-operation with civil society;
- Take determined measures and mobilise the necessary resources to ensure the effective implementation of the action plans for the Roma in the fields of employment, housing and health care, in close co-operation with the latter's representatives; continue the active implementation of the Action Plan on the Educational Needs of Roma and Members of other National Minorities, focusing on participatory monitoring and evaluation of the measures taken so far;
- Envisage collecting comprehensive up-to-date data on the situation of national minorities while complying with international standards regarding the protection of personal data;
- Take a more determined approach to combating all forms of discrimination on ethnic, national or religious grounds, prosecute incitement to racial or religious hatred and discourage expressions of prejudice and stereotype, including in the media and politics;
- Take resolute steps to counteract the worrying trend towards increased school segregation of pupils along ethnic lines;
- Take all possible steps to ensure that the Councils of National Minorities can effectively perform their role and are thus able to improve the participation of persons belonging to national minorities in public affairs; adopt, where necessary, legislative and practical measures to allow improved representation of national minorities, and in particular of the Roma, in elected bodies, especially at the local level;
- Strive to give national minorities more substantial support on a regular basis with a view to preserving and developing their cultural heritage and languages;
- In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, carry out an assessment of the needs and demand of persons belonging to national minorities regarding the use of minority languages in relations with administrative authorities and on topographical signs and regarding teaching in and of these languages.