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**SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

**COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE
RELATING TO ARTICLE 4 OF THE FRAMEWORK CONVENTION**

SECOND CYCLE

“Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination. “

This document was produced for the work of the Advisory Committee. For publication purposes, please refer to the original versions of the opinions of the Advisory Committee on the Framework Convention.

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

As of 2 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted 40 opinions, among which 38 opinions on Article 4.

NOTE

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

This statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. On the contrary, the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may be considered acceptable at one stage but that need not necessarily be so in further cycles of monitoring. It may also be the case that issues that appear at one stage of the monitoring to be of relatively minor concern prove over time to have been underestimated.

1. Albania

Opinion adopted on 29 May 2008

Legislative framework for prohibiting discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted shortcomings in the legislative framework for the protection of national minorities and invited the authorities to remedy them, particularly with regard to combating discrimination.

Present situation

a) Positive developments

A working group was set up in 2002 to review the legislation on national minorities and make recommendations. The results of its discussions were reflected in the National Plan for the implementation of the Stabilisation and Association Agreement between Albania and the European Union. As far as non-discrimination is concerned, an initial breakthrough should be noted: Albania recently passed an amendment to the Criminal Code, making racial motivations for criminal offences an aggravating factor (Act No. 9686 of 26 February 2007).

At the international level, on 26 November 2004, Albania ratified Protocol No. 12 to the European Convention on Human Rights, which extends the scope of the prohibition of discrimination, including that based on affiliation with a national minority, to all rights.

b) Outstanding issues

Passing an anti-discrimination law is not on Parliament's agenda for the time being. Civil society groups have in fact drafted a bill – mentioned in the State Report - on the subject, but it is unclear as yet whether it will be taken up by Parliament. In this connection, the Advisory Committee recalls that, for the purposes of the Framework Convention, it is important that there are no gaps in the legislation prohibiting discrimination; it is important that the various social fields (such as housing, health, access to public services and access to benefits) are covered, which does not yet appear to be the case in Albania.

Recommendation

The Advisory Committee encourages the authorities to complete their reform of the legislation prohibiting discrimination, notably against persons belonging to minorities, so as to ensure that all relevant areas are covered.

Monitoring discrimination and available remedies

Findings of the first cycle

The Advisory Committee considered that the People's Advocate had an important role to play in identifying and rectifying discriminatory practices, and encouraged the authorities to extend the scope of his activities nationwide.

The Advisory Committee noted allegations of discrimination against national minorities in various areas. Considering that minorities are more vulnerable, the authorities should take steps to combat discrimination, *inter alia* by eliminating corruption as a means of resolving the problems.

The Advisory Committee considered that Albania should identify the most appropriate ways and means of obtaining reliable statistical information broken down by age, gender and geographic location, so as to be able to assess the socio-economic situation of national minorities compared with the rest of the population and develop measures to ensure full and effective equality.

Present situation

a) Positive developments

The People's Advocate has continued his work in the human rights field, taking action on a number of matters connected with the protection of national minorities, including the birth certificate issue (see paragraph 81). The Albanian public appears to have become more familiar with this institution, and the number of complaints received has increased significantly since its inception in 2000.

b) Outstanding issues

The People's Advocate himself is of the view that there is insufficient awareness of his institution within the Roma community in particular. The Advisory Committee notes that in practice few complaints are lodged with the People's Advocate in relation to discrimination based on affiliation with a minority: 14 complaints were recorded between 2001 and 2006, and only one was examined on the merits. The Advisory Committee notes that the complaint in question concerned a case in which two gynaecologists were alleged to have been negligent in their treatment of a Roma woman, resulting in her death and that of her child. At the time, the People's Advocate had recommended that the two doctors be prosecuted; in the end, the prosecution culminated in their acquittal by the Fier District Court, which had jurisdiction over the case.

The Advisory Committee also notes that, according to the State Report, the courts have had to deal with few prosecutions relating to cases of discrimination based on ethnic origin. Furthermore, in its discussions with a number of national minority representatives, the Advisory Committee noted that the courts are rarely mentioned as a means of obtaining justice in cases of alleged violations of their rights. In the Advisory Committee's view, such a situation does not necessarily mean there are no discrimination problems or racially motivated acts in Albania, as the authorities appear to suggest, but may be explained by the public's lack of information and confidence in the judicial system.

Moreover, the issue of indirect discrimination does not appear to have been given sufficient consideration by the judicial and non-judicial authorities, including the People's Advocate. Indeed, the Advisory Committee notes that the problems faced by some persons belonging to minorities in areas such as social services, housing and education are generally considered – by both the authorities and the People's Advocate – to affect the population as a whole rather than just national minorities, and should not therefore be regarded as discriminatory treatment.

It is true that Albania is still in a difficult socio-economic situation. Nevertheless, the Advisory Committee is of the view that persons belonging to national minorities may be more affected by such problems, given the more vulnerable economic situation some of them face, the prejudice they may suffer and the fact that some of them – particularly Roma – are not in possession of the required documents in order to be eligible for certain welfare benefits. In this connection, the Advisory Committee notes that Albania still has no statistical data on the socio-economic situation of national minorities. Yet such data are essential in order to design public policies aimed at addressing their problems effectively (see also comments on Article 15).

In addition, the Advisory Committee notes that corruption within Albanian public institutions – a problem acknowledged by the authorities – persists, and is still likely to affect some persons belonging to minorities to a greater extent, due to the fact that some are in a more vulnerable economic situation. Indeed, their situation may make them more dependent on government assistance, and thus significantly complicate their access to certain benefits in the event of corruption.

Recommendations

The authorities should develop campaigns to make both the general public and national minorities aware of the means of redress available in the event of discrimination. Additional

emphasis should be placed on making members of the judiciary and the People's Advocate aware of the issue of indirect discrimination in cases involving persons belonging to minorities.

The Advisory Committee considers that the Albanian authorities should initiate statistical studies designed to provide accurate information on the socio-economic situation of minorities, using methods that ensure the protection of personal data in conformity with the principles contained in international norms on this subject.

The Advisory Committee considers that, in the context of their efforts to combat corruption, the authorities should take particular account of the fact that some persons belonging to national minorities, being in a weaker social position, are potentially more vulnerable to corruption practices.

Socio-economic situation of the Roma

Findings of the first cycle

While noting the efforts made to adopt a National Strategy on the Roma, the Advisory Committee invited the authorities to ensure that a maximum amount of consultation and participation takes place in devising and implementing this strategy and that appropriate funding is allocated to it.

Present situation

a) Positive developments

Associations representing the Roma minority were involved in developing the strategy for improving the living conditions of this minority (referred to hereafter as the National Strategy on the Roma), adopted on 18 September 2003. It is an ambitious, comprehensive strategy encompassing the education, economy, employment, social protection, health, justice and public administration sectors.

A monitoring unit for the National Strategy on the Roma has been set up within the Ministry of Labour, Social Affairs and Equal Opportunities, and its status within the Albanian administration was recently upgraded. In December 2007, the unit published a progress report on the implementation of the National Strategy on the Roma, with help from UN agencies active in Albania. In the Advisory Committee's view, the publication of this report – to which all the ministries involved in Roma issues contributed – is a positive signal in terms of the importance the authorities place on the strategy's practical impact.

Pilot projects have been set up with the help from non-governmental organisations and aid from the international community in some sectors. For example, posts for Roma mediators have been created in the health, education and police sectors with assistance from the United Nations Development Programme (UNDP); nursery schools, in which Roma and non-Roma children study alongside one another, have been opened in some municipalities. Generally speaking, representatives of the Roma minority saw these one-off local projects in a positive light. Were they to be extended and given structural support, they would open up interesting prospects with a view to improving the situation of Roma.

A number of NGOs have been particularly active in relation to the issue of civil registration of Roma: they have alerted the Roma community to this issue and, for example, helped Roma parents with the legal procedure – regarded as a deterrent in many respects – *inter alia* by covering the associated costs. The authorities themselves have introduced special temporary measures by extending the deadline for declaring births of children.

b) Outstanding issues

According to many of those consulted, particularly representatives of the Roma minority, the National Strategy on the Roma has had no tangible effect, in many respects, on their day-to-day lives. Although efforts were made to set up the monitoring unit within the Ministry of Labour, Social Affairs and Equal Opportunities in 2003, its resources and powers are insignificant in

comparison with the scale of the task assigned to it. It is made up of three administrators, including one Rom, who are responsible for co-ordinating the work of the various agencies involved in improving the living conditions of Roma. Government funding for measures relating to Roma comes from the budgets of the various ministries, each of which has an allocation either for vulnerable groups in general or for Roma in particular. According to those consulted by the Advisory Committee, this budgetary arrangement is not conducive to the effective harnessing of resources for the strategy or proper co-ordination of activities. Generally speaking, in practice the funding provided by the authorities remains minimal, since most of the projects put in place to implement the strategy have been initiated by civil society with assistance from international organisations. In many cases, however, these are one-off projects confined to certain municipalities. The Advisory Committee notes, for example, that for the time being the aforementioned Roma mediators are working on a voluntary basis; it considers that they ought to receive appropriate training and remuneration so as to ensure the sustainability of this initiative.

One weakness frequently identified in connection with the strategy's implementation, including in the aforementioned progress report, concerns the lack of involvement by local authorities. The latter have generally stayed in the background in respect of implementation measures, and the level of consultation with central government is regarded as too limited.

The inclusion of Roma in the civil register upon the presentation of identity papers – birth certificates in this case – continues to be a major problem for the Roma community. The Advisory Committee is deeply concerned to note that many people are still not included in the civil register, and consequently have difficulty gaining access to health care and education. The legal situation is unsatisfactory in this respect; under Albanian legislation a child must be registered within 45 days of birth, and parents require a court decision in order to register their children after this deadline. According to Roma associations themselves, Roma parents are still not always aware of the need to declare their children, and those having married below the legal age are very reluctant to register them for fear of revealing their situation. Moreover, children must be registered in the district in which the parents themselves were registered, which adds a further complication, both procedural and financial, in some cases.

The Advisory Committee heard several times during its dialogue with Roma representatives that some local authorities require parents to pay a municipal tax in order to register their children. The authorities in question apparently regard this practice as a means of ensuring that the tax is actually paid. Nevertheless, the Advisory Committee considers it inappropriate to make population registration conditional on the payment of a municipal tax: this has the effect of increasing the number of Roma who decide not to register their children's births.

In the Advisory Committee's view, it is essential to ensure that the conditions placed on such registration are not *de facto* more difficult for Roma to fulfil owing to their extremely vulnerable situation. The Advisory Committee also notes that a number of those it consulted, including the People's Advocate and the Monitoring Unit for the National Strategy on the Roma, raised the issue of the conditions placed on registration. It further notes that the European Commission against Racism and Intolerance (ECRI), in the recommendations set out in its third report of December 2004, had already drawn the authorities' attention to the need to ensure that all Roma children are included in the civil register.

The Advisory Committee notes that the housing situation for persons belonging to the Roma minority is a particular source of concern. Many Roma are still living on sites for which they do not have any property document, despite the authorities' efforts to legalise unlawful buildings. A number of municipalities have ordered evictions in recent years, for instance in Elbasan in 2006, without offering rehousing for persons belonging to the Roma minority. The Advisory Committee is particularly concerned to hear that only Roma were affected in the aforementioned case, since ethnic Albanians living in the building subject to the eviction order were able to be rehoused. According to Elbasan's Roma community, three years after being

evicted, four Roma families are still living in tents. Such a situation raises discrimination issues and calls for urgent action on the part of the authorities.

Recommendations

The Advisory Committee urges the authorities to make it a priority to include Roma in the population register, particularly given the repercussions of the non-registration in terms of both access to a number of social rights and trafficking of Roma children. They should introduce a free, simplified administrative procedure for this purpose and step up their efforts, in conjunction with municipalities and associations active in this area, to make Roma parents aware of their obligation to register children's births.

The Advisory Committee considers it essential to turn the National Strategy on the Roma into a genuine Albanian government policy: the authorities should specify the division of responsibilities among central government, local authorities and non-governmental organisations, provide for appropriate budgetary funding and resources, take steps to collect statistical data on the situation of Roma and develop assessment indicators for the strategy.

The authorities should ensure that evicted persons are treated equally when it comes to rehousing, and that specific monitoring is undertaken in relation to the rehousing of persons belonging to the Roma minority.

2. Armenia

Opinion adopted on 12 May 2006

Combating discrimination and promoting equal opportunities

Findings of the first cycle

In its first Opinion, the Advisory Committee urged the Armenian authorities to set up the institution of the Human Rights Ombudsperson in a timely manner.

It also recommended a more systematic monitoring of the implementation of the anti-discrimination legislation.

Finally, it considered that the authorities should step up their efforts to secure full and effective equality of persons belonging to national minorities by implementing additional measures in the fields of education, culture and participation in public life.

Present situation

a). Positive developments

The first Human Rights Ombudsperson was appointed in 2003. During her mandate (2003-February 2006), the Ombudsperson put specific emphasis on discrimination issues, including discrimination based on ethnicity, in order to raise awareness of the need to promote positive measures in favour of equal treatment of persons belonging to national minorities. The Advisory Committee welcomes the fact that, despite limited resources, the Ombudsperson's Office paid particular attention to possible abuses against members of national minorities, including by means of preventive action. The Advisory Committee also commends the efforts made to include persons with a minority background in the staff.

The Advisory Committee welcomes the fact that problems encountered by the Yezidi community in Zovuni regarding the legalisation of their settlement prompted the authorities to take measures to resolve the issue, following the filing of a complaint to the Ombudsperson.

The Advisory Committee welcomes the fact that the new Criminal Code enacted in 2003 now makes incitement to racial hatred a crime.

b). Outstanding issues

The Advisory Committee notes the views expressed by the majority of the representatives of national minorities met during its visit that very little support is provided by the authorities in order to ensure equal opportunities of persons belonging to national minorities, especially with regard to effective participation in public affairs (see also comments with respect to Article 15).

Allegations of discrimination in the process of land privatisation, particularly with regard to persons belonging to the Yezidi national minority, were brought to the attention of the Advisory Committee.

The Advisory Committee was also informed of allegations of discrimination in access to social benefits and employment in the case of the Yezidi, although it noted that there seem to be no patterns of systematic exclusion of persons belonging to minorities from the labour market or from social benefits. Some minority representatives expressed the wish to see positive measures to promote the inclusion of persons belonging to national minorities in the labour market.

The Advisory Committee notes the lack of data based on ethnic origin, in particular concerning the socio-economic situation of persons belonging to national minorities, which is an obstacle to informed and effective policy-making in favour of minorities. However, it takes note of the results of the census of 2001, that provide some data broken down by ethnicity and of the fact that there are no formal obstacles in Armenia to the collection of such data. It also notes that, in conversations with the Advisory Committee, the statistical authorities recognised the relevance of further collection, for policy-making purposes, of socio-economic or educational data on the situation of national minorities, in particular in the case of the Yezidi. It also notes with interest that the draft law on minorities envisages the possibility of collecting information on ethnic minorities, provided all rules concerning personal data protection are respected.

Recommendations

The Advisory Committee encourages the authorities to secure further resources for the Ombudsperson's Office. It also encourages the newly appointed Ombudsperson to continue to pay particular attention to possible discrimination and violations of the rights of persons belonging to national minorities.

Despite the limited number of reported incidents of discrimination, the Advisory Committee encourages the authorities to continue to carefully monitor the situation in this respect. It also encourages the authorities to further promote awareness among persons belonging to national minorities of their rights and of existing remedies for dealing with incidents of discrimination.

The Advisory Committee invites the authorities to remain vigilant with regard to possible cases of discrimination in access to social and economic rights. Allegations of discrimination in the process of land privatisation should also be carefully investigated.

The Advisory Committee encourages the authorities to pursue their efforts towards mainstreaming minority issues into all relevant sectors of policy-making, and in particular education, so as to ensure the effectiveness of measures to promote equal opportunities of persons belonging to national minorities. It also encourages them to adopt positive measures in favour of persons belonging to national minorities, including as regards access to the labour market.

The Advisory Committee encourages the authorities to undertake further collection of statistical data on national minorities, in order to facilitate the development of effective positive measures targeting persons belonging to national minorities.

3. Austria

Opinion adopted on 8 June 2007

Anti-discrimination legislation

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the Austrian authorities to further develop the existing anti-discrimination legislation, *inter alia* by taking measures to transpose the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin into domestic legislation and to raise awareness of discrimination-related issues among the society at large.

Present situation

a). Positive developments

The Advisory Committee welcomes the amendments made in 2004 to the Equal Treatment Act, which transpose into domestic legislation the European Council Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. It also welcomes the adoption of Equal Treatment acts at the level of the *Länder*.

The Advisory Committee also notes the broadening of the mandate of the Equality Commission and of the Ombudspersons for Equal Treatment so as to include discrimination on grounds other than gender, in line with the new anti-discrimination legislation. It observes that the number of persons contacting the Ombudspersons for Equal Treatment is increasing, as well as the number of cases submitted to them, which demonstrates increasing awareness of the existence of this institution. Polls and other studies also show some increasing awareness of ethnic discrimination issues among the population at large.

b). Outstanding issues

The Advisory Committee regrets that, despite the amendments of 2004 to the Equal Treatment Act, the anti-discrimination legislation, which includes 23 different acts including laws adopted by the *Länder*, has a complex and scattered structure and it is therefore difficult for the public to make use of it. This lack of clarity and accessibility does not contribute to awareness-raising on discrimination among potential victims and the public at large while it might also make it difficult to invoke the new legislation in courts. Moreover, the Advisory Committee was informed by various sources that the existing legislation could be further strengthened, notably on the regulation of the burden of proof, the sanction system and the structure and role of the two independent bodies.

The Advisory Committee was informed that, notwithstanding some positive developments in this respect (see also paragraph 41 above), there is insufficient awareness about the legislation on discrimination among the public at large and the judiciary, especially regarding the provisions of the amended Equal Treatment Act, which have not often been invoked by judges.

The Advisory Committee is concerned by the current limited support given to the work of the Office of the Ombudspersons for Equal Treatment. In order to be able to continue to work efficiently and to become more visible and accessible to the public, the Advisory Committee thinks that the office would need to be substantially reinforced (budget and staff) and local branches should be established in the *Länder*. Moreover, interlocutors who met with the Advisory Committee during its visit were concerned that the location of the Ombudspersons' office, as well as of the Equality Commission, under the Ministry for Women, Media and Public Service, could potentially hamper the independence of the two specialised bodies. According to various sources, the work of the Equality Commission has so far had only a limited impact.

Recommendations

The Advisory Committee urges the authorities to strengthen the capacity of the Ombudspersons for Equal Treatment and of the Equality Commission so as to guarantee that their competences and resources are sufficient to ensure their independence and their capacity to provide adequate assistance to persons who have been victims of discrimination.

The Advisory Committee invites the authorities to take more resolute action to increase awareness about discrimination problems and about existing legal remedies, both among the population at large and the judiciary (prosecuting authorities and judges).

Data collection

Findings of the first cycle

Observing the large discrepancies between the results of the 1991 population census on the number of persons belonging to national minorities and the estimations of the national minorities themselves, the Advisory Committee invited the authorities to identify further ways of obtaining reliable statistical data on national minorities.

Present situation

Outstanding issues

The Advisory Committee notes that the results of the 2001 population census, which enquired on the language spoken in everyday life, indicate that the numbers of persons belonging to national minorities are, as in the previous census, much lower than the estimates made by the minorities themselves. The authorities informed the Advisory Committee that, although they recognise that the results of the census cannot, alone, provide accurate numbers, other indicators, such as enrolment in bilingual schools, church attendance, use of media, are even less reliable than the census results. Therefore, they informed the Advisory Committee that, in their view, the most reliable source of data is the results of the census, considered over a longer period of time.

The Advisory Committee is aware of the difficulties encountered in collecting information on the number of persons belonging to national minorities. However, this information is important to determine thresholds required for bilingual topographical indications and for the effective enjoyment of other rights to which minorities are entitled in the Austrian legislation.

The Advisory Committee was also informed that there is a shortage of data and information on the socio-economic and educational situation of persons belonging to national minorities. In particular, the Advisory Committee notes that there is a lack of reliable data concerning the Roma, which is an obstacle to the development of specific policies that adequately respond to their needs. The Advisory Committee recalls that the availability of reliable data makes it possible to target more closely the needs of minorities and make the necessary adjustments to policies which affect them. Reliable data are also crucial for developing adequate measures to combat discrimination based on ethnic origin. Information and data on the socio-economic or educational situation of persons belonging to minorities can be obtained in different ways, such as sociological studies or surveys, using methods offering adequate personal data protection.

Recommendation

The Advisory Committee invites the authorities to continue seeking ways and means of collecting data on persons belonging to national minorities, including on their socio-economic and educational situation, in close cooperation with those concerned and in line with the principles contained in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

Situation of Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee observed the existence of considerable socio-economic differences between many Roma and the rest of the population, especially in the field of housing and employment. It invited the authorities to take further measures in these fields, as well as in the field of education, to promote equal opportunities for Roma in the socio-economic sphere and it recommended the collection of further data on the situation of the Roma to better respond to their needs.

Present situation

a) Positive developments

The Advisory Committee notes that the authorities continued to provide some support to projects aimed at improving the participation of Roma in socio-economic life, both in Burgenland and in Vienna. It also observes that innovative projects have been implemented, such as the Thara Haus project which aimed to improve access of Roma youth to the labour market. Furthermore, it welcomes the fact that the Department for Intercultural and Integration Affairs of the City of Vienna, set up in 2004, appointed a person specifically in charge of dealing with problems facing the Roma, whether autochthonous or those with migrant background.

b) Outstanding issues

The Advisory Committee was informed that many Roma continue to be at a disadvantage, especially in the fields of housing and employment. Although barriers in accessing employment are tightly connected with gaps in the field of education, the Advisory Committee was informed that they also result from deeply rooted prejudices and discrimination against persons belonging to the Roma minority.

Interlocutors of the Advisory Committee also reported that more attention should be paid to the situation of Roma living outside Burgenland, where most of the efforts made by the authorities have concentrated so far, especially in view of the fact that currently, the majority of the persons belonging to the Roma minority live in Vienna.

While acknowledging the efforts that have been made to improve the situation of the Roma, especially in the field of education and preservation of the language, representatives of the Roma minority highlighted, during the visit of the Advisory Committee, the overall marginalisation of many Roma and the absence of comprehensive policies to remedy this and to promote their integration in the mainstream society (see also remarks in respect of Article 15). They also reported on the particular difficulties faced by Roma youth and women. The Advisory Committee is of the opinion that there is a need for more resolute and long-term policies, programmes and resources to achieve effective participation of the Roma in socio-economic life.

Recommendation

The Advisory Committee urges the authorities to implement more resolute and comprehensive policies and programmes to promote equal opportunities for persons belonging to the Roma minority, especially in the areas of employment and housing. Such measures should be designed, implemented and evaluated in close consultation with the persons concerned and continuity of the support should be ensured in the long term. Existing successful projects should be replicated and further supported. Particular attention should be paid to the situation of Roma youth and women.

4. Azerbaijan

Opinion adopted on 9 November 2007

Legislation, policies and practice to combat discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the authorities to develop detailed and comprehensive legal provisions pertaining to discrimination in certain key fields.

The Advisory Committee expressed concern regarding credible reports indicating the existence of incidents of hostility and discrimination against persons belonging to the Armenian minority. It considered that the authorities should better monitor developments in this field, raise

awareness on discrimination-related issues and encourage individuals to seek remedies when they consider that their rights have been violated.

Present situation

a) Positive developments

The Advisory Committee welcomes the establishment of five regional branches of the Ombudsperson's Office, including in regions where minorities live compactly, which should contribute to increase accessibility to this institution.

The Advisory Committee also welcomes the adoption in 2006 of a National Action Plan on the Protection of Human Rights in Azerbaijan and the subsequent adoption of an Order on the implementation of the Action Plan. It is hoped that the implementation of this Action Plan will contribute to increased awareness on discrimination-related issues and existing remedies, both among the judiciary and in the population at large.

b) Outstanding issues

The Advisory Committee regrets that no further legislation pertaining to discrimination has been developed since its first Opinion. The authorities have informed the Advisory Committee that they do not see a need for additional anti-discrimination legislation as existing provisions contained in various laws are, in their view, sufficient. They also highlighted the absence of claims related to discrimination, including on grounds of ethnic origin. However, the Advisory Committee is concerned that the existing legislation is scattered and not easily accessible.

Moreover, the relevant provisions do not seem to be applied. The Advisory Committee was informed that there continue to be no case-law related to discrimination on grounds of ethnic origin, including at the level of the Constitutional Court, and that the Ombudsperson's Office has never received any claim on this ground. The Advisory Committee takes the view that the absence of case-law and claims of discrimination on grounds of ethnic origin can also result from a lack of awareness of discrimination, in the judiciary and society at large. Moreover, there might be insufficient knowledge among persons belonging to national minorities of existing legal remedies in cases of discrimination as well as a lack of confidence in the justice system.

Despite this absence of case-law and reported claims, the Advisory Committee has, however, collected information from various sources indicating that persons belonging to the Armenian minority are facing widespread discriminations in various spheres. These include obstacles in access to public employment, housing, public services, payment of pensions and other social benefits and difficulties in restitution of properties. The Advisory Committee is deeply concerned by statements made during its visit by representatives of the authorities. They have either denied that ethnic Armenians face discrimination problems in Azerbaijan, or attempted to justify discriminations against them by the absence of a solution to the conflict of Nagorno-Karabakh.

Moreover, reports brought to the attention of the Advisory Committee indicate that persons belonging to other national minorities, in particular the Russians, have also been facing discriminatory treatment, notably in the field of housing (forced evictions and violations of property rights). The Advisory Committee is concerned by the absence of official monitoring of such acts of discrimination.

The Advisory Committee was informed during its visit that the adoption of measures to promote equal opportunities for persons belonging to national minorities, including in the framework of a law on national minorities, is considered inappropriate as such measures could be interpreted as a sign that there exist differences in society and could, therefore, go against the overall objective of integration in society. The Advisory Committee recalls that non-discrimination provisions are in most cases not sufficient to ensure equal opportunities and effective equality for persons belonging to national minorities. In particular, persons belonging to the numerically smaller national minority groups living in Azerbaijan, such as the Kryz, the Khynalygs or the Udins, are

facing increasing difficulties to preserve their distinct identity, culture and language. This is due *inter alia* to socio-economic difficulties and internal migrations.

Recommendations

The Advisory Committee calls on the Azerbaijani authorities to develop a more comprehensive and detailed anti-discrimination legislation, so as to complement existing acts and ensure that potential victims of discrimination in various spheres of life are adequately protected. Such legislation should permit the adoption of specific measures aiming at full and effective equality of persons belonging to national minorities.

The authorities and the Office of the Ombudsperson should implement awareness-raising campaigns in the society at large on discrimination on grounds of ethnicity and on existing remedies, possibly as part of the new Action Plan on the Protection of Human Rights, in particular among persons belonging to national minorities. Awareness raising and specific training of the judiciary on this issue should be particularly emphasised.

The Advisory Committee urges the authorities to take measures to prevent and remedy discrimination against persons belonging to the Armenian minority. It is essential for the authorities to undertake adequate monitoring of developments in this regard.

Specific measures should be designed to promote equal opportunities for persons belonging to numerically smaller national minorities in all areas of life while enabling them to maintain and develop their culture and language.

Collection of ethnic data

Findings of the first cycle

In its first Opinion, the Advisory Committee invited the Azerbaijani authorities to collect additional data on the situation of persons belonging to national minorities in different spheres, so as to be able to adopt adequate measures to meet the needs of these persons.

Present situation

a) Positive developments

The Advisory Committee was informed by the authorities that, in addition to data resulting from the 1999 population census, some data on the educational situation of persons belonging to national minorities are available, based on attendance in schools/classes with instruction in minority languages.

b) Outstanding issues

The Advisory Committee notes that there are large discrepancies between figures resulting from the 1999 population census regarding numbers of persons belonging to national minorities and estimates by national minorities themselves.

The authorities have informed the Advisory Committee that they do not plan to collect data on the situation of national minorities outside of the context of population census (see also remarks in respect of Article 3), although the existing legislation does not prevent the collection of data related to ethnic, national and linguistic affiliation. However, the Advisory Committee recalls that the availability of up-to-date and accurate data on the socio-economic and educational situation of persons belonging to national minorities could contribute to better responding to the needs of these persons and promote more effectively their equal opportunities. In fact, such data are indispensable to monitor and adjust existing policies as well as to identify and fight against potential discrimination. (see also remarks under Article 15).

Recommendation

The Advisory Committee urges the authorities to consider ways and means of collecting further data on the situation of persons belonging to national minorities, while respecting international

standards of protection of personal data as well as the principles contained in Article 3.1 of the Framework Convention.

5. Bosnia and Herzegovina

Opinion adopted on 9 October 2008

Legislation to combat discrimination and existing remedies

Findings of the first cycle

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.

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

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.

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.

b) Outstanding issues

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.

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.

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.

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.

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

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.

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

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

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

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

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). 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).

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 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.

Recommendation

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

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

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.

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.

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

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.

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 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.

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

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.

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.

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. The Advisory Committee is deeply concerned by this situation.

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.

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 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

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.

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).

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

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

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 settlement and have granted the Roma inhabitants with legal occupancy rights.

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

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 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.

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.

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

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.

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.

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.

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

Data collection and population census

Findings of the first cycle

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

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

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.

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).

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

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.

6. Bulgaria

Opinion adopted on 18 March 2010

Legal and institutional protection against discrimination

Findings of the first cycle

In its first Opinion on Bulgaria, the Advisory Committee found that the anti-discrimination provisions contained in Bulgarian legislation were rarely applied in practice, and that the relevant case-law of the courts did not reflect the true number of acts involving discrimination and racism.

The Advisory Committee also found that the measures taken to narrow the socio-economic gaps between the Roma and the population at large had proved unsuccessful overall and considered that more determined efforts should be made to improve these persons' living conditions and promote their integration.

a) Positive developments

The Advisory Committee notes the establishment of the Directorate for Ethnic and Demographic Issues (DEDI) within the structure of the Ministry of Labour and Social Affairs. The Directorate has the responsibility for assisting the Government in the elaboration and implementation of the government policy for integration of persons belonging to ethnic minorities and providing the necessary organisational and technical support for the activities of the National Council for Co-operation on Ethnic and Demographic Issues.

The Advisory Committee notes that the Directorate is charged with the elaboration and implementation of anti-discrimination measures and monitoring the implementation of the Framework Programme for Equitable Integration of Roma into Bulgarian Society.

The Advisory Committee welcomes the adoption of the Protection against Discrimination Act (in force as from 1 January 2004) which transposed into Bulgarian legislation the European Council Directive on Racial Equality (2000/43/EC) and the European Council Directive on Employment Equality (2000/78/EC) which provides a clear legal basis for protection against discrimination, including in the field of employment. The Act ensures effective and comprehensive protection for the victims of discrimination. The Advisory Committee notes in particular the shifting of the burden of proof in cases of discrimination and the provision allowing non-profit public interest organisations to litigate on their own behalf when the rights of many are breached.

The Advisory Committee notes further that the Act protects *inter alia* against discrimination in the exercise of labour rights, the exercise of the right to education and training, and equal participation of men and women, and of persons belonging to ethnic, religious and linguistic minorities in governance and decision-making processes within the State authorities, public bodies and local self-governments.

The Advisory Committee welcomes the establishment in 2005 of the Commission for Protection against Discrimination (CPD) which has been empowered, together with the courts, to enforce the Act and in particular to receive complaints from individuals, make rulings on infringements, issue binding instructions on the application of the anti-discrimination legislation, decree measures to be taken to terminate established infringements, and apply pecuniary fines. The Commission is also entitled to review draft legislation, suggest amendments to existing legal acts, and to make recommendations to State and municipal authorities on termination of discriminatory practices and repealing of their decisions.

The Advisory Committee notes that, according to the information in its 2008 Annual Report, the Commission issued 268 decisions, 182 of which on merit. The Advisory Committee considers that the high number of applications to the Commission attests to a high degree of trust on the part of the public.

The Advisory Committee welcomes the information according to which the Commission for Protection against Discrimination, in the period since its establishment until 1 September 2009, has adopted 70 decisions on the grounds of ethnicity (11 per cent of all 585 decisions decreed by the CPD), ascertaining discrimination in 36 of these cases (51 per cent of all decisions on the

grounds of ethnicity). Of these, 27 decisions were appealed against in court and two decisions reached a settlement.

The Advisory Committee was informed that courts consistently interpret the Protection against Discrimination Act as special legislation in relation to the laws that regulate the different areas in which discrimination is manifested, recognising thus the primacy of the Protection Against Discrimination Act in comparison to other laws. According to the same information, judges are consistently paying attention to the application of the shifting of burden of proof principle and treating it as a significant element of anti-discrimination protection.

The Commission for the Protection against Discrimination, in addition to fulfilling its primary monitoring role, also developed an awareness-raising campaign in the framework of the Action Plan to Combat Discrimination 2006-2010. The objective of this campaign is to raise public awareness of discrimination issues, to inform about the Commission's functions and powers, and to familiarise the public with the existing possibilities of seeking redress through the Commission or the courts in cases of discrimination.

b) Outstanding issues

The Advisory Committee notes that in February 2007, the Bulgarian Constitution was amended and that at the request of the Monitoring Committee of the Parliamentary Assembly, the Venice Commission issued an Opinion on the entire text of the Constitution, focusing in particular on the provisions regarding the judiciary and, to a lesser extent, on human rights provisions.

The Advisory Committee welcomes and strongly supports the Venice Commission's recommendation that the Constitution expressly takes into account the rights of persons belonging to national minorities under the Framework Convention rather than relying solely on the general rule of non-discrimination. It also strongly supports the recommendation that the language used in the Constitution be reviewed in order to convey a more open attitude towards minorities.

The Advisory Committee also shares the concern expressed by the Venice Commission that a number of provisions of the Bulgarian Constitution seem to restrict fundamental rights to citizens only. While accepting that the term 'citizen' refers to all individuals to whom this Constitution applies, the Commission recommended that the equivalent of 'citizen' be replaced with the equivalent of 'everyone' during a future constitutional revision, to make the wording of the Constitution unambiguous.

In regard to Article 11(4) of the Bulgarian Constitution which prohibits the existence of political parties on ethnic, racial or religious lines, the Advisory Committee shares the Venice Commission's concern that such prohibition could be used to prevent minority, linguistic, ethnic or religious groups from organising themselves at all and supports the recommendation that the Constitution expressly takes into account the rights of these persons rather than simply relying on the general rule of non-discrimination (see also remarks in respect of Article 15).

The Advisory Committee notes that the State Report describes the Office of the Ombudsman, established in 2004, as an independent institution, the aim of which is to uphold the rights and freedoms of citizens. It asserts further that in some municipalities local ombudsmen, established under the Law on Local Government and Local Administration, focus mainly on the local protection of the rights of persons belonging to national minorities. In this context, the Advisory Committee finds it disturbing that the Ombudsman Office in Sofia, in its six years of existence, has received no complaints from persons belonging to national minorities.—The local ombudsman in Plovdiv, where the number of persons belonging to the Roma is quite substantial and where there are significant problems affecting the Roma, has not dealt with minority issues either.

Recommendations

In the view of the Advisory Committee, the Commission for Protection against Discrimination should be given the appropriate resources, including financial means, to allow it to fulfil its

duties effectively and independently and to intensify the monitoring of alleged cases of discrimination.

Legislation should be revised to guarantee expressly the rights of persons belonging to national, ethnic, linguistic or religious minorities. The authorities should tackle vigorously any discriminatory practices affecting minorities, including through public awareness-raising campaigns and training programmes for persons concerned.

Implementation of the principles of full and effective equality and non-discrimination in respect of the Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee found persistent and considerable socio-economic gaps between the Roma and the population at large. It further found that the measures taken under the Framework Programme launched by the Government in 1999 to narrow the gaps had overall proven unsuccessful. The Advisory Committee considered that more determined efforts should be made by the Government to improve these persons' living conditions and promote their integration.

Present situation

a) Positive developments

Significant efforts, including financial, have been undertaken since 2006 by the Ministry of Regional Development and Public Works to implement measures planned under the National Programme for the Improvement of the Living Conditions of Roma. The Ministry informed the Advisory Committee of ongoing efforts to legalise existing Roma neighbourhoods and identify opportunities for the creation of new zones for housing construction.

The Advisory Committee welcomes the efforts of the Agency for Geodesy, Cartography and Cadastre which has so far spent a total of more than 16,500,000 leva (~8,250,000 €) to finance the preparation of cadastral maps and cadastral registers for 42 Roma settlements of a cumulative surface area of 167,450 ha (of which 26,860 ha located in urban areas). Cadastral maps for other settlements have been prepared or are in the process of being established as well. These noteworthy undertakings should significantly improve the legal guarantees and safeguards of tenure within the Roma settlements.

The Advisory Committee welcomes the information that authorities have taken steps to improve the unacceptable living conditions in a number of Roma settlements by carrying out technical infrastructure projects such as laying water pipes and constructing sewer networks, as well as by improving fire safety by installing hydrants in over 90 Roma neighbourhoods (see also related comment under Article 15).

b) Outstanding issues

The Advisory Committee is deeply concerned that despite the progress achieved in some fields, in particular in the improvement of the technical infrastructure in some Roma settlements, the situation of Roma in respect of health, employment and housing is still a matter of serious concern. Moreover, according to information received by the Advisory Committee, physical barriers such as two-metre high metal or concrete fences surrounding Roma neighbourhoods segregating them from the rest of the community, have been constructed at the expense of the respective municipalities in Plovdiv (around the Sheker Romani mahala), as well as in the Romani neighbourhoods in Kazanlak and Kiustendil. Such practices are incompatible with the principles of Article 4 of the Framework Convention.

Public services such as waste collection or public transportation are almost non-existent in such segregated neighbourhoods and the majority of residents do not enjoy legal guarantees or safeguards of tenure.

The Advisory Committee is deeply concerned about the living conditions in the Plovdiv Stolipinovo Romani neighbourhood inhabited by approximately 40,000 Roma which the delegation of the Advisory Committee visited and witnessed. According to information obtained from the local Roma representatives, some 95% of the residents live without legal guarantees or safeguards of tenure. The concrete apartment blocks, built in the 1970s, are in a state of total dilapidation. Sewage which has flooded the basements waist-high seeps out and flows into the courtyards. Refuse has not been collected in years and water supply does not reach beyond the fourth floor (out of ten) apparently due to problems with water pressure in the buildings. The Advisory Committee notes with consternation that no action has been taken to remedy the situation in spite of the authorities being aware of the problem for years.

Cases of forced evictions without adequate alternatives proposed, abusive police raids on their homes and even destruction of property of Roma are not infrequent in Bulgaria. The Advisory Committee shares the view expressed by the European Committee of Social Rights that Bulgaria has discriminated against Roma families by failing to take into account that Roma families run a higher risk of eviction than the rest of the Bulgarian population due to the precariousness of their tenancy and that they are disproportionately affected by the legislation limiting the possibility of legalising illegal dwellings.

The Advisory Committee is deeply concerned in this context about the forced eviction of some forty Romani households from the Gorno Ezerovo district of Bourgas on 8 September 2009 as well as a number of threatened evictions from a number of locations such as Meden Rudnik and Batalova vodenitza in the Vazrazhdane district of Sofia where Roma families have lived for decades.

In this context, the Advisory Committee is also deeply concerned by the documented cases of discriminatory practices against Roma in the provision of medical services, namely the refusal to send emergency aid ambulances to Romani districts, the segregation of Romani women in maternity wards, and the use of racially-offensive language by doctors, which were quoted in the European Committee of Social Rights decision on a complaint submitted by the Roma Rights Centre in which Bulgaria was found to be not in conformity with the Revised European Social Charter.

Recommendations

The Advisory Committee urges the Bulgarian authorities to stop all forced evictions of Roma, including from informal settlements, without adequate alternative accommodation being proposed. It further urges the authorities to take, as a matter of priority, vigorous measures to put an end to practices carried out by some municipalities of separating Roma from the majority population by means of walls or fences. Adequate measures must be designed to prevent such practices from recurring in the future. It is imperative that local authorities be reminded of their responsibilities in the field of respect for human rights, and in particular rights of persons belonging to national minorities.

The authorities should thoroughly investigate any complaint of alleged discrimination of Roma in the provision of goods and services. If discriminatory acts are established, the perpetrators must be adequately sanctioned. The authorities must also ensure that in such instances, Roma receive adequate protection and, where applicable, compensation from law enforcement agencies and local authorities.

The Advisory Committee urges the authorities to intensify their efforts to prepare cadastral maps and cadastral registers of properties in Roma settlements with a view to improving the legal guarantees and safeguards of tenure within these settlements. Particular attention should be paid to improving housing conditions in Roma neighbourhoods. The authorities should also ensure that persons concerned have the possibility to participate effectively in the search for solutions.

7. Croatia

Opinion adopted on 1 October 2004

Legislative developments in the field of discrimination

Findings of the first cycle

In its first Opinion on Croatia, the Advisory Committee called on the authorities to ensure that rules concerning implementation of legislation contain no discriminatory provisions and that efforts should be taken to develop anti-discrimination legislation to cover all relevant societal setting.

Present situation

a) Positive developments

Croatia has adopted improved guarantees against discrimination and intolerance through amendments to the Criminal Code, adopted in 2003 and 2004, as well through amendments to the Labour Code, adopted in 2003, prohibiting direct and indirect discrimination and it has addressed problems related to certain normative acts containing discriminatory provisions.

b) Outstanding issues

A lack of detailed legislation against discrimination persists in certain key fields, such as education and housing.

Another problem is that the authorities do not possess adequate data on the implementation of the laws pertaining to discrimination, including on the number of civil and criminal cases brought before the judiciary and information on the resulting decisions. The overall impression is however that the relevant legislation is rarely invoked in comparison to the minorities' estimates of the actual number of cases involving discrimination, notably as regards Roma and Serbs.

Recommendations

The authorities should develop further non discrimination legislation in key fields such as education and housing. Croatia should also introduce enhanced and inclusive methods of monitoring developments in this field.

Repossession of property

Findings of the first cycle

In its first Opinion, the Advisory Committee encourages the authorities to address discrimination that was particularly prevalent in the context of return of persons belonging to national minorities, including in decisions related to the repossession of property.

Present situation

a) Positive developments

Croatia has made significant progress in solving cases of repossession of property by the returnees belonging to national minorities and in addressing discriminatory elements that have hampered this process.

b) Outstanding issues

There remain substantial problems in the return process including damage and looting caused by the temporary users of the property and claims by temporary occupants for compensation for alleged improvements they have made to the property during their occupancy. Furthermore, delays in the processing of repossession cases, including by the judiciary, and in the execution of certain eviction orders, have caused significant problems in some instances.

Recommendations

The authorities should complete the work on the pending repossession cases in accordance with the deadlines set and ensure that the cases of looting and claims for damages are handled in a non-discriminatory manner.

Former tenancy rights holders

Findings of the first cycle

In its first Opinion on Croatia, the Advisory Committee urged the authorities to pay particular attention to the problems related to the former tenancy rights holders belonging to national minorities.

Present situation

a) Positive developments

Croatia has introduced two programmes to provide housing assistance to the former tenancy/occupancy rights holders, most of whom are Serbs. These programmes were welcomed as important elements in building conditions for sustainable return especially in urban areas.

b) Outstanding issues

The authorities showed limited commitment to the implementation of the above-mentioned programmes up until the launching of an information campaign in co-operation with the international community in September 2004, less than four months before the dead-line for applying for such assistance outside the areas of special state concern.

In addition to the issue of housing needs *per se* of the former occupancy/tenancy rights holders, some persons belonging to national minorities have challenged the legality of the past termination of their occupancy/tenancy rights. In one such case, the European Court of Human Rights recently concluded that there had been no violation of Article 8 of the Convention (right to respect for one's home) or of Article 1 of Protocol No. 1 (protection of property) to the Convention, but other cases involving different circumstances are still pending before domestic instances.

Recommendations

The authorities should give a high priority to the provision of adequate housing for former occupancy/tenancy right holders, and make sure that the application of deadlines are not unreasonable in the light of the recent launching of the information campaign on this matter.

As regards cases concerning the legality of the termination of occupancy/tenancy rights, particular care should be taken to ensure that each case is examined carefully and in a non-discriminatory manner by the relevant domestic instances.

Office of the Ombudsman

Findings of the first cycle

In its first Opinion, the Advisory Committee concluded that the work of the Office of the Ombudsman in tackling discrimination merits increasing support.

Present situation

a) Positive developments

Issues pertaining to national minorities continue to be an important element of the work of the Office of the Ombudsman, and the office reports that its relations with relevant governmental instances have somewhat improved.

b) Outstanding issues

Limited resources continue to be a problem for the Office of the Ombudsman. With funds from international sources, the Office has been able to conduct visits to certain regions where minorities reside compactly, including in the areas of special state concern, but it has no permanent presence outside Zagreb.

Recommendations

Bearing in mind that many key human rights problems facing national minorities often pertain to regions outside Zagreb, Croatia should enable the Office of the Ombudsman to consolidate its regional presence, for example, through regional offices.

Special measures*Findings of the first cycle*

In its first Opinion, the Advisory Committee urged the authorities to launch additional positive measures in the field of employment with a view to ensuring full and effective equality for persons belonging to national minorities. The issue of employment was also raised in the Committee of Ministers' first Resolution on the implementation of the Framework Convention in Croatia.

Present situation

Outstanding issues

Persons belonging to national minorities continue to face serious problems in the field of employment, which is partially due to the fact that certain areas of their compact residence face particularly serious economic difficulties. The Advisory Committee has not been informed of any positive, targeted Government programmes launched to counter the impact of the past discriminatory measures that Serbs in particular experienced in various fields of employment (see also related comments under Article 15 below).

In a number of villages and hamlets inhabited by returning Serbs, the situation has been aggravated by the fact that the authorities have not ensured the provision of electricity and other essential infrastructure. This has made it very difficult to launch economic activities and hurt sustainable return in these areas. Therefore, the authorities' announcement, in September 2004, that a new electrification project will be launched to address this problem is to be welcomed.

Recommendations

Croatia should introduce special measures aimed at guaranteeing persons belonging to national minorities full and effective equality in the field of employment, and it should seek financing for such initiatives. It should also ensure that basic infrastructure is provided to communities throughout Croatia in a non-discriminatory manner.

Citizenship*Findings of the first cycle*

In its first Opinion, the Advisory Committee urged the authorities to address the problems that persons belonging to national minorities face in their attempts to invoke citizenship legislation.

Present situation

a) Positive developments

There is reported progress in administrative procedures pertaining to citizenship. Also, the National Programme for the Roma makes reference to some of the problems concerning the citizenship status of Roma and envisages important measures to address them, including improved awareness-raising efforts on the applicable rules and procedures and employment of persons with Roma language skills in the relevant administrative structures.

b) Outstanding issues

Despite progress, the requirements under the Law on Citizenship and the application in practice continue to pose problems for persons belonging to national minorities. Many Roma in particular encounter difficulties in providing necessary documents to prove they meet the residency requirement and, due to the problem of illiteracy, especially amongst Roma women, in meeting the “proficiency in the Croatian language and Latin script” requirement under the said law. The application of the said Law’s residency and other criteria also pose problems for persons belonging to other national minorities, including Bosniacs. In this connection the Advisory Committee recalls that the Law on Citizenship contains a simplified citizenship procedure reserved for ethnic Croats only, which has been criticised, *inter alia*, by the UN Committee on the Elimination of Racial Discrimination.

Lack of confirmed citizenship makes persons concerned particularly vulnerable to discrimination and could constitute an obstacle in the realisation of their rights, including economic, social and cultural ones.

The implementation of the relevant parts of the National Programme for the Roma has only begun and more targeted efforts are needed to tackle some pertinent problems such as the obstacles linked to the Croatian language and Latin script proficiency requirement.

Recommendations

Croatia should take further measures – including training, improvements in administrative procedure as well as legislative amendments, as necessary – to ensure that a lack of confirmed citizenship does not constitute an obstacle in the enjoyment of basic rights and that the citizenship process is fully accessible to persons belonging to national minorities.

National Programme for the Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee concluded that Croatia has not been able to secure full and effective equality between the majority population and Roma and it urged the authorities to develop more comprehensive programmes and strategies to address concerns of this national minority.

Present situation

a) Positive developments

Following extensive consultation with Roma and other relevant partners, the Croatian Government adopted a National Programme for the Roma in October 2003. The programme contains a range of commendable initiatives aimed at preventing ethnically motivated hostility and discrimination towards Roma, including by improving the performance of the law-enforcement bodies, and at improving the protection of Roma in education, employment, health and other key sectors where Roma face considerable problems.

There is a clear commitment to the implementation of the Programme in certain parts of the administration, including in the Government Office for National Minorities, and some important activities envisaged in the programme have been launched, such as training initiatives for young Roma.

b) Outstanding issues

The overall implementation of the programme has to date been disappointing. The programme was not given the necessary priority in the 2004 budget and in many sectors the envisaged projects have not started in line with the agreed schedule. The Commission, established in April 2004, to monitor the implementation of the programme will hopefully help to accelerate the process.

For many Roma, the increased commitment of the central government to Roma has not yet brought about local improvements, including in terms of their access to key public services, many of which are the responsibility of local authorities. For example, in the informal Roma settlement of Struge in the city of Zagreb, Roma families have lived since 1960s in sub-standard housing conditions, without basic sanitary facilities, heating, running water and electricity.

Recommendations

Stronger support, financial and other, both at the central and local level is required for the overall implementation of the National Programme for the Roma in order to achieve tangible improvements in the protection of Roma, including in terms of addressing the status of informal settlements and providing them with basic infrastructure on a non-discriminatory basis. This should be facilitated through evaluation and monitoring of the implementation of the Programme, in accordance with set targets.

8. Cyprus

Opinion adopted on 7 June 2007

Legal and institutional framework for combating discrimination

Findings of the first cycle

In its first Opinion on Cyprus, the Advisory Committee, having noted shortcomings in the legal framework for protecting against discrimination, encouraged the authorities to take the necessary measures to ensure protection against discrimination in all sectors and to make effective remedies available to potential victims.

Present situation

a) Positive developments

Specific measures have been taken over the last few years in order to strengthen the legal and institutional framework for preventing discrimination. Most of these measures have been adopted in the context of the transposition of the Council of the European Union's Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Since 2004, the Commissioner for Administration (the Ombudsman) has been designated as the new specialised Anti-discrimination Agency. In the event of proven discrimination, the Ombudsman can levy fines on responsible persons or authorities and/or make recommendations to them indicating the practical steps required to end the discriminatory acts and avert their recurrence. The Advisory Committee is pleased to note that the Constitution of Cyprus, in Article 28(2), as well as the anti-discrimination legislation which recently came into force, include a person's attachment to a "community" among the prohibited grounds for discrimination. According to the information supplied by the authorities, discussions are proceeding in the Ministry of Justice on introducing aggravating circumstances for racially-motivated crimes.

Under the legislation governing equal treatment for men and women and equal treatment in employment and labour, the Ombudsman has also been designated as the Equality Authority. The two institutions, the Anti-discrimination Agency and the Equality Authority, together form the Cypriot Equality Agency.

The Advisory Committee takes note of the efforts made by the Ombudsman to supervise compliance with the anti-discrimination legislation, and welcomes this institution's sound cooperation with the NGOs. It notes that the Office of the Ombudsman accepts complaints lodged in different languages and, where necessary, through recourse to interpreters for oral communication.

The Advisory Committee notes that the representatives of the three minority groups whom it met do not report instances of discrimination against members of their groups for reasons relating to their religious or ethnic origin. At the time of the Advisory Committee's visit to Cyprus, only three complaints had been lodged with the Ombudsman by members of the minority groups (Maronites). In general, it is observed that, while complaints against discrimination have been lodged with the courts, few court findings of discrimination have been recorded.

b) Outstanding issues

In view of the increased capacity required by the Office of the Ombudsman to deal with its new tasks in the area of preventing discrimination, the Advisory Committee encourages the authorities to grant all necessary support to this institution. It notes that, hitherto, with the resources placed at its disposal, the Office of the Ombudsman has not been able to develop, as prescribed in its terms of reference, codes of good practice specific to the activities of the various public or private bodies bound by the principles of non-discrimination and equality. Likewise, it appears that the resources available do not enable the Office of the Ombudsman to conduct research and produce statistics on the state of discrimination in the various sectors.

The Advisory Committee observes that, while the Ombudsman is an institution known and respected by the population and the authorities, and that projects have already been implemented to increase awareness about it (information campaigns, seminars, educational programmes), further efforts are needed as regards information and awareness-raising concerning the principles of non-discrimination and equality. The Advisory Committee expresses the hope that the various projects to be implemented as part the European Year of Equal Opportunities for All 2007 will make a substantial contribution in this respect.

The Advisory Committee notes that a National Institution for the Defence of Human Rights has been established under the aegis of the Law Commissioner. The Advisory Committee acknowledges the efforts and commitment of the Law Commissioner to promote and supervise compliance with the commitments undertaken by Cyprus under various international human rights instruments. However, it notes that the plan announced by the authorities to enable the transformation of this institution into an independent National Human Rights Commission, based on the Paris Principles, has so far not been implemented.

Recommendations

The authorities should make available to the Office of the Ombudsman additional resources - technical, financial and human - to build its institutional capacity and ensure the operational independence and the effectiveness of the new institutions established under its aegis. The Advisory Committee encourages the authorities to intensify the awareness-raising and information activities on the principles of non-discrimination and equality, especially concerning the safeguards and defences against discrimination introduced over the last few years.

The authorities should take appropriate measures to implement their plan to establish a National Human Rights Institution based on the Paris Principles, with a mandate to conduct its activities on its own authority and with complete independence. Appropriate financial and human resources for the effective functioning of this institution should be made available to it.

9. Czech Republic

Opinion adopted on 24 February 2005

Legal and institutional protection against discrimination

Findings of the first cycle

In its first Opinion on the Czech Republic, the Advisory Committee found that there were certain shortcomings in legal and institutional protection against discrimination, and called for firm action to correct them.

a) Positive developments

The Advisory Committee welcomes the fact that amendments have been adopted to several legislative acts in order to improve protection against discrimination in relevant sectors, such as civil procedure, administrative procedure and labour law. Moreover, although after a considerable delay, legal protection against discrimination is now being strengthened by an important normative text, since the bill on equal treatment and protection against discrimination was approved by the Government at the end of 2004. This text aims to transpose the EU Directive No. 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin into domestic law. It will combine and consolidate, within a single document, the legal means of protection against all forms of discrimination in many areas of life. It also improves institutional protection by providing for the setting-up of an Equal Treatment Centre - a specialised body dealing with questions of equal treatment and discrimination.

The Advisory Committee also wishes to pay tribute to the work of the Ombudsman, which particularly benefits persons belonging to national minorities (see, in this connection, the comments contained in paragraph 60 below). It notes that the Ombudsman's Office, reportedly one of the most respected of the Czech institutions, will continue, as far as its remit allows, dealing with equal treatment issues.

The Advisory Committee notes with satisfaction that, generally speaking, minority representatives consider that they enjoy equal treatment in all areas of life, and report that there is no particular problem of discrimination.

b) Outstanding issues

The Advisory Committee wishes to draw attention to significant discrepancies between official census figures and non-governmental estimates, which suggest that the real numerical size of national minorities is considerably under-estimated. The Advisory Committee finds the lack of reliable figures particularly disturbing in view of the fact that numerical thresholds, based on minorities' share in the population, are one of the criteria which determine application of certain important measures in such fields as education, use of minority languages for certain official purposes, and participation in public affairs.

It is also difficult to assess the extent to which full and effective equality exists between persons belonging to national minorities and the majority in the absence of figures - broken down by age, sex and geographical distribution - on the real situation of these persons in various areas, for example, education, employment and housing. This is particularly important for the Roma, when measures to improve their living conditions and integration into the society, are being planned, implemented and monitored (see the comments on Articles 3, 5, 10, 11, 12, 14 and 15 below).

The Advisory Committee also notes that, apart from the difficulties faced by the Roma in various fields, limited information is available on instances of ethnic discrimination, investigative action and the number of cases where victims have been properly compensated (see also comments on Article 6 below).

Recommendations

The authorities are encouraged to make every effort to accelerate the adoption and entry into force of the new anti-discrimination legislation, and use all available means, including information and awareness-raising campaigns, to ensure its effective implementation. In

particular, they should ensure that the Equal Treatment Centre is established without delay, and give it all the resources needed to fulfil its mission properly.

Similarly, more support should be provided for the Ombudsman, and the institutions to which its recommendations apply should be more responsive to them.

The authorities are also expected to take further action to collect data on the situation of minorities in the various sectors, including the frequency of cases of discrimination, investigative measures and action taken on the latter.

Application of the principles of equal treatment and non-discrimination with respect to the Roma

Findings of the first cycle

In its first Opinion on the Czech Republic, the Advisory Committee found that there were considerable socio-economic inequalities between Roma and the rest of the population, and called for more resolute action to remove them. It noted that discrimination was still frequent against Roma, and recommended that the authorities pay special attention to solving this problem, including by providing a suitable legislative basis and effective remedies.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that Czech society, including state authorities, is increasingly becoming aware of problems faced by Roma when it comes to equal treatment and non discrimination. For instance, Czech courts have, in recent years, given a certain number of decisions recognising that Roma have suffered discrimination in specific sectors, such as housing, employment and access to public places.

b) Outstanding issues

The Advisory Committee takes note with concern of the serious problems which Roma still face in most areas of life, and of the social exclusion and marginalisation which they continue to face. Although many measures have been taken under the Government's Roma integration policy, their situation, in terms of equality and discrimination, remains a major challenge. In most sectors there are considerable disparities between Roma and the majority population, as well as other national minorities.

While being aware of the fact that available data may be fragmentary, the Advisory Committee underlines that unemployment figures for Roma are particularly high, with estimates ranging from over 50% to 70%, and even 90% in certain cases. The Advisory Committee finds it disturbing that, although the Czech legislation provides protection against discrimination in this sector, many Roma still encounter discriminatory practices in the labour market and the Government's employment policies have had no real impact on their situation.

Roma report that they have serious problems in the housing field. Their situation in this area has not only failed to improve, but actually shows a dangerous tendency to become even worse. The authorities are aware of the gravity of this situation. They admit that, until the new anti-discrimination legislation is passed, and in the absence of any other text offering specific protection in this area, Roma are particularly vulnerable in the housing sector. A shortage of subsidised housing, restrictive conditions on access to such housing, and their own social and economic insecurity, leave Roma open to discriminatory attitudes and treatment. The most serious issue in this respect is the persistence of such discriminatory practices on the part of certain local authorities. Instead of seeking lasting solutions to the housing problems of Roma, these authorities often take measures (including numerous cases of eviction) which simply perpetuate their segregation, marginalisation and distress.

Roma have equally serious problems in other areas, such as access to public services, health or protection of their rights by the courts. There are many reports of continuing discrimination in

these areas, and of intolerance and hostility towards Roma (see also the comments under Article 6 below).

The Advisory Committee notes with concern that such practices and attitudes are still being reported in education, another sector where the Roma have special problems, in spite of the authorities' efforts in the last few years to improve their situation. One of the main problems noted is related to undue placement of Roma children in "special" schools (for details, see comments under Article 12 below).

The situation of Roma in the health field is no less disturbing. Here again, it appears that they do not always receive equal treatment from the medical or administrative staff concerned, and that their general health situation is still markedly worse than that of the rest of the population. The recent initiative of employing Roma assistants within the health system to facilitate communication and an approach more suited to their specific situation, is to be welcomed (see also the comments in paragraph 60 below).

Recommendations

The authorities are strongly encouraged to pay particular attention to the initiative - recently launched and apparently well received by civil society - for the setting-up of a special agency to combat social exclusion.

The authorities should also pursue and expand the sectoral measures aiming to improve the situation of Roma, while ensuring that these measures respond to the real needs of Roma and are adequately funded. As a matter of urgency, more resolute action should be taken in the housing field. At the same time, care should be taken to ensure that this action does not help to perpetuate segregation of Roma. In employment, special attention should be paid to Roma youth as well as to Roma women, who often suffer discrimination on both counts.

Roma themselves should also be consulted and involved more systematically in projects and programmes designed for them, and there should also be more effective partnership with NGOs in this area.

The authorities should look into the causes of inadequate implementation of the Government policy for the Roma integration at local level. With due respect to the principles of local self-government, they should verify whether legislative or other measures are needed to define more exactly the role and responsibilities of local authorities in areas affecting national minorities, and to make their action in this field more effective.

Allegations concerning the sterilisation of Roma women without their prior free and informed consent

The Advisory Committee is deeply concerned at recent allegations, from non-governmental sources, of cases of sterilisation of Roma women without prior free and informed consent. It notes that, in response to the criticisms voiced in this context both nationally and internationally, the Ombudsman decided, in the second half of 2004, to investigate those allegations, and brought the matter to the attention of the relevant state authorities. It is important that the authorities have decided, although after delays, to set up a special commission of enquiry within the Ministry of Health. The Advisory Committee also notes that, encouraged by public discussion on these claims, and with the support of various human rights organisations, 61 persons have decided, according to recent non governmental information, to lodge a formal complaint with the Ombudsman.

Recommendations

The Advisory Committee urges the authorities to ensure that investigation of these allegations is conducted in optimum conditions of transparency, independence and impartiality by the special commission of enquiry established by the Ministry of Health. It is essential that undue delays in publication of the findings be avoided, and that any cases where persons or authorities appear to have committed the acts complained of, be pursued vigorously by law enforcement authorities.

The authorities should also ensure that the existing legal regulations are fully respected, and that more comprehensive regulations are adopted, in compliance with relevant international standards, in order to define prior free and informed consent with sufficient clarity. Competent bodies are encouraged to ensure that concerned doctors respect the relevant principles of professional ethics.

10. Denmark

Opinion adopted on 9 December 2004

Anti-discrimination legislation

Findings of the first cycle

The Advisory Committee in the first monitoring cycle considered that the Danish Government should examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.

Present situation

Positive developments

The Advisory Committee welcomes that as part of the transposition into Danish law of Council Directive (2000/43/EC) on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, that new legislation has been introduced to provide additional safeguards against discrimination on the grounds of race or ethnic origin.

The Act on Ethnic Equal Treatment (Act No. 374 of 28 May 2003) forbids discrimination on the grounds of race or ethnic origin in a number of societal settings. The act also forbids reprisals as a result of complaints against discrimination.

The act applies to all public and private enterprises and, *inter alia*, activities concerning social protection, including social insurance and healthcare, social benefits, education and access to and supply of goods and services, including homes. The act also applies to membership of and participation in certain organisations. It contains provisions concerning the sharing of the burden of proof in cases concerning discrimination and the right to compensation for non-financial losses. The act also strengthens the role of the Institute for Human Rights in terms of its powers to process specific complaints and express opinions on the complaints concerning discriminatory treatment under the Act (see also below, The Danish Institute for Human Rights).

Recommendations

The Advisory Committee recognises that it is too early to analyse the operation and functioning of this new legislation. It does, however, encourage the authorities to keep a dialogue open with the persons and groups most concerned by the legislation as part of a process of onward going evaluation of the effectiveness of the anti-discrimination legislation and its contribution towards encouraging a spirit of tolerance and intercultural dialogue in Denmark (see also under Article 6 below).

The Danish Institute for Human Rights

Present situation

Positive developments

The Advisory Committee welcomes the passing of the Act on the Establishment of the Danish Centre for International Studies and Human Rights (Act No. 411 of 6 June 2002) which establishes within this Centre, the Danish Institute for Human Rights. The Danish Institute for Human Rights has an important role to play in terms of promoting equal treatment of all people regardless of race or ethnic origin. It provides assistance in handling complaints of victims of

discrimination, launches independent inquiries into discrimination and publishes reports and submits recommendations in matters regarding discrimination.

As has been noted (see above, Anti-discrimination legislation), the Act on Ethnic Equal Treatment has given the Danish Institute for Human Rights additional responsibilities in terms of processing complaints concerning discriminatory treatment and providing opinions on whether there have been contraventions of the prohibition against discrimination and the prohibition against reprisals.

Outstanding issues

The Danish Institute for Human Rights has a wide range of duties, which will undoubtedly increase in importance, in particular with regard to the individual complaints procedure. The Institute will need additional resources to cope with the growing demands placed on it in this respect. It will also need to ensure that there is no duplication and overlap with the Danish Ombudsman in the individual cases examined by the Ombudsman's Office.

The Advisory Committee notes that the Complaints Committee lacks the power to enforce disclosure of material information on a case, and that the Complaints Committee can not address direct discrimination on the grounds of religion unless it can be perceived as indirect discrimination on the grounds of race or ethnic origin. The Advisory Committee is aware that there have been calls to remedy these two perceived weaknesses in the functioning of the Complaints Committee.

The Advisory Committee considers that within the Danish Institute for Human Rights, the National Department can play an important role in helping to implement the spirit of the Framework Convention in Denmark, in particular for persons belonging to ethnic or religious groups that would like the protection offered by the Convention.

Recommendations

The Advisory Committee considers that the Government should keep under review the financial needs of the Danish Institute in view of its important and developing tasks and examine the calls for the Complaints Committee to have the power to enforce disclosure and the competence to look at issues of discrimination on the grounds of religion.

11. Estonia

Opinion adopted on 24 February 2005

Legislative developments in the field of discrimination

Findings of the first cycle

In its first Opinion on Estonia, the Advisory Committee called on the authorities to develop and implement anti-discrimination legislation to cover various societal settings.

Present situation

a) Positive developments

Estonia has improved guarantees against discrimination, including through amendments to Article 10 of the Employment Contracts Act, which entered into force in 2004. Estonia has declared its intention to develop further its normative framework pertaining to discrimination, and a draft law on Equality and Equal Treatment has been proposed. (For more information on challenges that persons belonging to national minorities, notably young women, face in the labour market, see comments under Article 15 below.).

According to amendments to the Legal Chancellor Act, which entered into force in January 2004, everyone has the right of recourse to the Chancellor of Justice to conduct a conciliation procedure if he or she finds that a natural person or a legal person in private law has discriminated against him or her, *inter alia*, on the basis of language or ethnic origin. While the

effectiveness of the new procedure is partly linked to the pending adoption of the new legislation on Equality and Equal Treatment, this procedure could provide an important recourse for persons belonging to national minorities and complement the Legal Chancellor's important on-going work in this domain.

The adoption of the State Legal Aid Act, which enters into force on 1 March 2005, was another important step of particular importance to persons belonging to national minorities, who often, notably for language reasons, encounter specific challenges in their access to legal documentation and procedures.

b) Outstanding issues

The adoption of the law on Equality and Equal Treatment has been delayed. As a result, the existing legal guarantees against discrimination still contain shortcomings and the full potential of the above-mentioned new conciliatory procedure is not being put to use.

The drafts of the above-mentioned equality legislation do not explicitly include citizenship as a prohibited ground of discrimination. The same is true as regards the right of recourse to the Legal Chancellor to conduct a conciliation procedure on the cases of alleged discrimination. The Advisory Committee recalls that in the Estonian context, where many residents are without the Estonian citizenship, legal safeguards against discrimination on the basis of citizenship – which do not exclude differential treatment with objective and reasonable justifications – would be of direct relevance to a large segment of society.

It is also to be noted that the above-mentioned Article 10 of the Employment Contracts Act stipulates in its paragraph 2 that it is not contrary to the said article to “require language skills necessary for the work and pay compensation for proficiency in languages”. It is important that this provision, which in itself pursues a legitimate aim, is not interpreted too broadly and/or in a manner that leads to undue obstacles for persons belonging to national minorities in their access to employment.

Recommendations

The authorities and the legislature should expedite the passage of new non discrimination legislation, ensuring also that adequate legal safeguards and procedures are in place in respect of discrimination on the basis of citizenship.

The authorities should carefully monitor the implementation of Article 10, paragraph 2 of the Employment Contracts Act so as to ensure that it does not lead to undue obstacles for persons belonging to national minorities in their access to employment.

Aliens Act

Findings of the first cycle

In its first Opinion, the Advisory Committee urged the authorities to ensure that the immigration quota is implemented without undue restriction on family reunifications.

Present situation

a) Positive developments

The Advisory Committee welcomes the amendments introduced to the Aliens Act in June 2002, which addressed the concerns expressed by the Advisory Committee regarding family reunification by exempting from the immigration quota *inter alia* the spouses of Estonian citizens or of aliens who reside in Estonia on the basis of residence permits.

b) Outstanding issues

The legal and political debates have continued over the issue of residence permits of former military officers and their spouses and minor children, including in the light of the amendments to the Aliens Act, which entered into force in January 2004, excluding explicitly the issuance of permanent residence permits to them.

Recommendations

The authorities should continue their efforts to ensure that in the decision-making pertaining to temporary and permanent residency permits due attention is paid to the rights of the persons concerned, including their right to respect for private life and home.

Naturalisation process*Findings of the first cycle*

In its first Opinion, the Advisory Committee regretted the relatively slow rate of naturalisation and called for additional measures to make naturalisation more accessible. In this connection, it also encouraged the authorities to pay increasing attention to availability and affordability of language training. Similarly, the Committee of Ministers underlined in its Resolution the need to promote the process of naturalisation.

Present situation

a) Positive developments

Estonia has introduced certain positive measures facilitating the naturalisation process. It has, *inter alia*, streamlined the administrative process between the registration of a citizenship application and the resulting decision and taken some steps to make the process of acquisition of citizenship more accessible to school children and to raise awareness of the importance of citizenship. In addition, prompted by a decision of the Supreme Court, further exemptions were introduced in 2004 for disabled persons from tests under the Citizenship Act.

These and other efforts to encourage naturalisation, coupled with the accession of Estonia to the European Union in May 2004, seem to have yielded certain results, and a clear increase in the rate of naturalisation was reported in 2004.

b) Outstanding issues

In spite of the recent increase, the number of persons without citizenship residing in Estonia remains disconcertingly high (on 31 December 2004, there were 150 536 persons without citizenship registered in Estonia). It is recognised that some of these persons lack motivation to seek citizenship. At the same time, studies suggest that many persons have opted not to seek citizenship because they consider the related tests too difficult and/or challenging their self-esteem. Despite the above-mentioned improvements affecting certain categories of potential applicants, the basic rules governing language tests under the Citizenship Act remain unchanged, and they constitute a real obstacle to the naturalisation of many persons, notably for the elderly, of whom those born before 1930 have been exempted from the written but not from the oral language exams. It is therefore encouraging that the authorities are currently considering proposals to exempt the elderly altogether from the language examination under the Citizenship Act. The Council of Europe's Commissioner for Human Rights has also made valuable recommendations to make the naturalisation process more accessible.

As regards affordability of language training, an amendment to the Citizenship Act, which entered into force in January 2004, introduced the possibility for full compensation for language training expenses. While this is in itself a positive development, the law envisages compensation only for those who subsequently pass their examinations on language and on the knowledge of the Constitution under the Citizenship Act. Proposals to expand the compensation scheme further were rejected in Parliament in October 2004. Aside from individual projects, often funded from foreign sources, there appears not to be enough systematic free-of-charge language training available for adults belonging to national minorities, despite the fact that improved Estonian language proficiency amongst national minorities is a central factor not only in terms of their access to citizenship but also for their employment opportunities and for the Government's integration efforts in general.

Recommendations

Estonia should continue to take steps to make naturalisation more accessible, including by pursuing the proposals to exempt the elderly applicants from language requirements under the Citizenship Act.

Estonia should introduce more free-of-charge Estonian language training opportunities for those persons with limited financial means who intend to take the citizenship exam or seek to improve their proficiency in the state language for other purposes that contribute to integration.

Social marginalisation and its effects

Current situation

Persons belonging to national minorities are affected by a number of problems linked to social marginalisation. In addition to being disproportionately affected by unemployment (see also comments on this issue under Article 15 below), persons belonging to socially vulnerable groups amongst national minorities face such problems as homelessness and drug abuse.

Of particular concern is the alarmingly high rate of HIV/AIDS amongst persons belonging to national minorities. It is to be welcomed that the authorities have increased their efforts in terms of prevention and treatment of HIV/AIDS, and there seems to be a consensus on the urgency of the matter.

The proportion of persons belonging to national minorities in prisons is disconcertingly high in Estonia, although the Government does not have reliable data on this issue.

Recommendations

It is essential that the authorities design and implement special programmes to tackle social marginalisation and its effects that are felt particularly amongst national minorities. The Government should maintain the prevention and treatment of HIV/AIDS as a high priority and ensure that related services and documentation are fully accessible to persons belonging to national minorities, including in the Russian language.

There is a need to obtain more data and to analyse further reasons for the high incarceration rate of persons belonging to national minorities and to examine in this connection how Article 4 and other principles of the Framework Convention are reflected in various stages of law-enforcement (see also related comments on data protection under Article 3 and on the language proficiency requirements of prison staff under Article 15).

12. Finland

Opinion adopted on 2 March 2006

Anti-discrimination legislation and its implementation

Findings of the first cycle

In its first Opinion, the Advisory Committee recognised the existence of legislative guarantees against discrimination, but expressed concerns about problems in their implementation, including *de facto* discrimination in the provision of services.

Present situation

a) Positive developments

Finland has continued to develop its anti-discrimination legislation, and both legislative and practical measures have been taken to transpose the EU Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). The new Anti-Discrimination Act (21/2004) and the launching of the work of the Ombudsman for Minorities and of the Discrimination Board are particularly important initiatives that have strengthened the legislative

tools and mechanisms available to victims of discrimination and others concerned. Valuable awareness-raising activities have also been carried out in this domain.

b) Outstanding issues

The Advisory Committee notes that the European Commission has initiated infringement procedures against Finland concerning the lack of transposition of the Racial Equality Directive and the Employment Equality Directive in the Province of Åland. New measures are, however, being taken to address these issues in Åland: new provincial anti-discrimination legislation entered into force in December 2005, and the Ombudsperson against discrimination is expected to take her office in March 2006.

The Advisory Committee welcomes the fact that the Anti-Discrimination Act requires that central and local authorities draw up plans for the fostering of equality in their spheres of activity, but there appears to be no structured system to monitor the quality and the implementation of such plans in practice.

As regards practice, cases of discrimination continue to be reported for example in the provision of services in shops to Roma as well as in restaurants, where Russians and Roma have in some cases been denied access on the basis of their ethnicity. In this respect, the Advisory Committee notes that Roma women wearing their traditional costume are especially vulnerable to such practices.

The Advisory Committee is particularly concerned about reports according to which manifestations of racism and name-calling by pupils towards children with Russian background have become increasingly common in Finnish schools. Racist attitudes in schools were also highlighted in a valuable study, issued by the Advisory Board for Ethnic Relations in 2004, on how the schools in the capital region tackle increasing diversity.

Recommendations

Implementation of comprehensive anti-discrimination legislation and related monitoring mechanisms should be continuously supported and developed.

The authorities should put in place regular monitoring of the quality and implementation of equality plans envisaged in the Anti-Discrimination Act (see also related comments under Article 6).

Particular attention should be paid to name-calling and other problems faced by pupils with minority background, including Russians. This requires concerted efforts by schools, parent associations, local and central authorities as well as others concerned.

Full and effective equality of Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee concluded that, despite special measures to promote equality, the socio-economic differences between the majority population and the Roma remained considerable.

Present situation

a) Positive developments

Finland has continued to pay particular attention to the situation of Roma in various fields, including through the work of the national and regional Advisory Boards on Roma Affairs.

Furthermore, the Ombudsman for Minorities has been active in addressing the problems faced by persons belonging to this national minority, including in the field of housing, and an increasing number of Roma are turning to this institution with their concerns. The work of the Ombudsman for Minorities has in certain cases prompted more coordinated action at the local level. This was the case, for example, in relation to housing concerns of Roma in northern Finland.

b) Outstanding issues

The discrimination experienced by certain Roma continues to hamper efforts to ensure full and effective equality. Despite steps taken by the central authorities, the Ombudsman for Minorities and various other actors, Roma continue to experience discrimination in their access to housing, and, for example, the prevention of discrimination in the selection of tenants of apartments granted on social grounds requires constant attention.

In addition to housing and education (on the latter question, see comments under Article 12), one key area of concern is the situation of Roma in the labour market. The authorities openly admit that discrimination exists in the labour market, and the Ombudsman for Minorities and the Ministry of Labour have launched important projects to alleviate such problems. However, lack of statistical data makes it difficult to monitor the situation in this sphere, identify underlying problems and propose remedies.

Recommendations

Efforts to ensure full and effective equality for Roma in such key fields as housing and the labour market need to be expanded further so as to ensure that the central authorities' commitment is felt at the local level and in the private sector. In this context, the authorities should, together with Roma representatives, seek ways to obtain improved statistical data.

13. Georgia

Opinion adopted on 17 June 2015

Legal and institutional framework related to equality and against discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the authorities to intensify their efforts towards combating discrimination by ensuring that the implementation of various pieces of legislation did not result in direct or indirect discrimination against persons belonging to national minorities. It further called on the authorities to continue their support to the Public Defender and to raise awareness among minority communities on their rights and on the legal remedies available to them in case of discrimination.

Present situation

a) Positive developments

The Advisory Committee welcomes the unanimous adoption of comprehensive antidiscrimination legislation by Parliament in May 2014. The Law of Georgia on the Elimination of All Forms of Discrimination introduces mechanisms against discrimination on a variety of grounds, including language, citizenship, property or social status, religion or belief, national, ethnic or social origin. It explicitly prohibits both direct and indirect, as well as multiple discrimination. The Law further contains provisions for access to the Public Defender who has been given the responsibility of hearing cases and concluding whether the allegation of discrimination is indeed founded. The Advisory Committee is further pleased to note that, following the appointment of the Public Defender as Equality Body, his budget was increased. The Equality Department, with five full-time staff in early 2015, is expected to be increased as the number of complaints received under the antidiscrimination legislation expands. In early 2015, some 50 admissible complaints had been received and are being reviewed. With regards to further details, the Advisory Committee refers to the findings and recommendations of the European Commission against Racism and Intolerance (ECRI) who will be examining the contents and application mechanisms of this law in depth when drawing up its fifth monitoring report on Georgia.

The Advisory Committee further notes with interest the adoption of the Human Rights Strategy and two-year detailed Action Plan in April 2014, which is overall viewed as a serious commitment by the authorities to the promotion of effective and non-discriminatory access to rights in Georgia. The main institution engaged in the monitoring of its implementation is the Public Defender who, among others, also fulfills the functions of national human rights institution. The Advisory Committee welcomes the fact that the Public Defender enjoys broad trust in society and that his activities and mandate are increasingly known among the public, owing among others to the seven regional offices located throughout the country. The number of complaints received by the Office has significantly increased in recent years. The Advisory Committee further notes that the annual and thematic reports on the situation of human rights in Georgia are discussed in Parliament and that the Parliamentary Committee on Human Rights and Civic Integration has since 2014 been engaged in monitoring the implementation of the recommendations of the Public Defender by government bodies, which has broadened their political significance.

b) Outstanding issues

According to interlocutors of the Advisory Committee, awareness of the rights and standards contained in the new antidiscrimination law amongst society and the legal profession alike remains very low. In addition, civil society representatives contend that the law has been deliberately made ineffective in practice as the powers of the Equality Body are limited to hearing the case and deciding whether discrimination did indeed take place or not. No fines or sanctions can be imposed, however, and Courts need to be separately addressed to claim compensation for any damages. The Advisory Committee has been informed that three amendments to the law have already been proposed in order to render it more effective, among others by extending the deadline in which concerned individuals can appeal to a Court and by enabling the Equality Body to obtain additional information directly from the private sector to assist in the review of cases.

In addition, it is of some concern to the Advisory Committee that the application of the new antidiscrimination standards in particular to the benefit of persons belonging to some national and other minorities remains subject to considerable resistance and public debate among certain traditional establishments. In particular the role of the Georgian Orthodox Church, which reportedly was fiercely opposed to the adoption of the law, continues to be viewed as immensely influential in sustaining a societal environment that is hostile to the implementation of certain rights contained in the law. This discourages affected individuals from addressing the Equality Body or seeking legal redress in cases of alleged discrimination in both the public and private sector, and reportedly dissuades some lawyers from assisting minority representatives.

Recommendations

The Advisory Committee calls on the authorities to raise awareness amongst society of the antidiscrimination standards as well as the relevant redress mechanisms in place and to ensure that the new provisions and procedures are well understood and systematically applied by members of the legal profession to promote the effective implementation of the law.

The Advisory Committee further encourages the authorities to actively engage in efforts to encourage all victims of discrimination in the public as well as the private sector to seek redress and claim protection in accordance with the existing legislative framework without fear of possible reprisals, among others by developing and implementing a targeted anti-discrimination policy in public agencies and by encouraging the private sector to do the same.

Full and effective equality

Findings of the first cycle

In its first Opinion, the Advisory Committee called on the authorities to identify appropriate means to better assess the situation and access to rights of persons belonging to national minorities with a view to developing more targeted measures to promote full and effective equality in society, including through the use of positive measures to overcome structural inequalities. It further encouraged the authorities to take all necessary steps to eliminate undue obstacles to the repatriation and access to rights of forcefully deported persons.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that the use of special measures intended to promote effective equality is explicitly allowed in the antidiscrimination law. Moreover, the necessity of positive measures to promote the exercise of the right to equality by persons belonging to national minorities is acknowledged and forms part of the state responsibilities enumerated in the draft 2015 Civic Equality and Integration Strategy (see also comments on Article 6). The Advisory Committee welcomes this renewed commitment to the effective equality of persons belonging to national minorities as valued members of Georgia's diverse society. The significance of developing and implementing a special policy for particularly disadvantaged and marginalised national minorities, as well as those living dispersed is further acknowledged in the document, and provision is made for ensuring that the impact of all measures taken towards their protection is regularly monitored and evaluated.

A number of efforts have been made by a variety of state bodies to promote in particular the access to rights of disadvantaged groups, such as the Roma or the Meskhetians (see comments on Article 12). In addition, a State Strategy of Repatriation of Forcibly Removed Persons from the SSR of Georgia by the Former Soviet Union in the 1940s was adopted in September 2014 and the Advisory Committee understands that an Inter-Agency Action Plan is currently being developed to further promote in particular the return of the Meskhetians. According to official information, a total number of 5841 applications, comprising some 8900 persons, were made under the 2007 Law of Georgia on Repatriation of Persons Forcefully sent into Exile from the Soviet Socialist Republic of Georgia, of which 5389 persons live in Azerbaijan. Some 1540 adults had received repatriate status by early 2015 and 418 had been granted conditional Georgian citizenship on provision that they relinquish Azerbaijani citizenship. The Advisory Committee also welcomes the creation of the Ossetian Forum by the Public Defender in January 2014 as platform to promote the rights of the Ossetians and to eliminate the negative consequences of past conflicts and tension.

b) Outstanding issues

Nevertheless, a number of important challenges to the full and effective equality of persons belonging to national minorities persist. The Advisory Committee notes that the lack of documentation and related issues surrounding legal status continue to be of deep concern for a number of persons belonging to national minorities, such as an estimated group of 60 elderly Roma. According to interlocutors, this situation continues to prevent access to rights in a number of spheres, including at times access to education as enrolment in schools requires parents to present their children's birth certificates which cannot always be obtained. The Advisory Committee finds that the specificity and complexity of the particularly dire situation of marginalised and dispersed living groups is still not sufficiently understood among relevant authorities, as disaggregated and up-to-date information on make-up and living conditions of these populations is often missing and representatives are not systematically involved in the design and implementation of measures.

The situation of the Meshketians who returned to Georgia on their own, outside the repatriation law, also continues to be of concern to the Advisory Committee. Community representatives estimate the overall number of persons at around 1500 (or some 200 families), living mainly in the Samtskhe-Javakheti region. It is in particular of deep concern to the Advisory Committee that some of the families remain in precarious legal conditions, such as without residence permit which prevents them from accessing a number of important rights and obstructs their integration. In addition, persons with repatriate status do not have access to certain benefits such as the participation in language courses, despite the fact that many of them, given their upbringing and life outside Georgia, do no longer speak Georgian. Overall however, the acquisition of citizenship remains the main issue of concern. Georgian legislation accepts dual nationality in only rare cases and based on special merits. As a result, foreign citizenship must be relinquished before Georgian citizenship can be acquired. This, however, is often problematic and involves a costly and complicated process. None of the 418 deported Meshketians who were granted conditional Georgian citizenship had returned to Georgia at the time of the visit of the delegation and minority representatives report that difficulties in relinquishing Azerbaijani citizenship prevent many of the persons with repatriate status from actually returning to Georgia.

Persons belonging to the Ossetian community are also faced with migration-related and citizenship issues, particularly those who reside or resided in conflict-affected areas. Many of them were forced to leave Georgia in the wake of ethnic tension and conflict and acquired foreign citizenship. As a result, many have had their applications for Georgian citizenship denied despite the fact that they have close ties to Georgia and consider it their home. The Advisory Committee notes with interest the recommendations made by the Public Defender to adequately assess the situation of conflict-affected individuals and to consider the possibility to grant citizenship on the basis of exception in accordance with state interest to those who confirm their willingness to live in Georgia and acquire citizenship. It finds that a similar approach to protect both human rights and state interests may also be appropriate in respect of the Meskhetians who have returned to Georgia on their own account. The Advisory Committee further notes with deep concern the effects of the installations of barbed wire along the administrative boundary lines (ABLs) with Abkhazia and South Ossetia which constitute a grave obstruction to the access to rights and freedom of movement of all persons living adjacent to those fences.

The Law of Georgia on the Legal Status of Aliens and Stateless Persons came into effect in September 2014 in the context of the EU Visa Liberalisation Process. According to specific provisions of this Law, whose entry into force have been postponed to 1 July 2015, foreigners were to be granted a visa for only 90 out of 180 days in an attempt to legalise a situation that has been marked by relatively easy trans-border movements within the region for decades. According to governmental and non-governmental sources, these amendments have been of particular concern to persons belonging to national minorities residing compactly in the border regions, such as in Samtskhe-Javakheti region, where family-related travel and cross-border trade not only form part of the daily lives of many but also constitute an important source of income. Many families in the Javakheti area have members who are reported to hold Armenian or other citizenships and will thus be required to leave Georgian territory at regular intervals unless they apply for temporary or permanent residence permits. Following repeated discussions and four rounds of amendments to the Law, the period of visa-free stay was extended in May 2015 to 360 days for citizens of countries which were to be identified per government decree. On 11 June 2015, the Georgian Government issued a decree listing 94 countries, including Armenia, Azerbaijan and the Russian Federation, whose citizens are thus allowed to remain in Georgia visa-free for 360 days. The Advisory Committee welcomes this development as it allows more time for affected individuals as well as relevant government structures to adjust to the new regulation.

It is of concern to the Advisory Committee, however, that reportedly no consultations were held prior to the amendments and that information on the possibilities for individuals to regularise their stay in accordance with the new provisions has been forthcoming only belatedly. This has resulted in substantial fears rising within the population, leading even to the impression voiced in some media, including foreign media, that the amendments were deliberately designed to affect minority populations. It is welcome in this regard that the Public Defender organised a meeting of the Minister of Justice with affected individuals in Akhalkalaki to raise awareness about the reasons for the amendment and to inform of the legal implications and avenues to apply for residence permits. Efforts have also been made to provide information in Armenian and Azerbaijani languages to ensure that all persons are duly informed. According to information received by the Advisory Committee, some confusion persists as to the possibility to apply for a permanent residence permit rather than a temporary one, and word of mouth continues to circulate in Kvemo Kartli region, where some persons belonging to the Azerbaijani minority are also affected, that authorities will only issue temporary residence permits. The Advisory Committee further learned that some of the applications for residence permits were rejected due to unspecified security concerns. While the number of such rejections is very small, the lack of access for the individual concerned to the information that justifies the charge is problematic as it significantly frustrates the ability to challenge its accuracy in court.

Recommendations

The Advisory Committee reiterates its recommendation to develop appropriate methods, in line with international and national data protection standards, of regularly collecting and assessing equality data on the access to rights of persons belonging to national minorities to ensure that targeted measures can be taken to promote their full and effective equality in line with Article 4 of the Framework Convention.

It further calls on the authorities to take all necessary measures to ensure that formerly deported persons who have returned to Georgia are effectively assisted in their integration in particular by promptly according an adequate legal status that guarantees equal access to rights. The Advisory Committee further encourages the authorities to consider all possible options, including further use of the Presidential special decree in line with a regionally coordinated approach, to grant citizenship to formerly deported or conflict-affected individuals in Georgia in an effort to protect human rights and state interests.

The Advisory Committee calls on the authorities to ensure that accurate information on the impact of legislative changes to the legal status of aliens is made available to all possibly affected parts of the population and in relevant languages so that speculations of possible disadvantages existing for persons belonging to national minorities are immediately discarded.

14. Germany

Opinion adopted on 1 March 2006

Combating discrimination

Findings of the first cycle

The Advisory Committee urged the authorities to continue working towards the adoption of a comprehensive anti-discrimination legislation as part of the transposition of European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic background (Race Directive).

The Advisory Committee was also of the opinion that the Government should seek ways of obtaining more reliable data on national minorities and that it should, in particular, make greater

effort to assess the socio-economic situation of persons belonging to the Roma and Sinti minority.

Present situation

a) Positive developments

The Advisory Committee notes that the draft anti-discrimination law was once again debated in the *Bundestag* in January 2006. It is essential to enact as soon as possible comprehensive anti-discrimination legislation. Such legislation should, in particular, provide victims of discrimination with effective remedies.

The Advisory Committee notes with interest the fact that representatives of some minorities have, during the visit of the Advisory Committee, come out in favour of the collection of more accurate socio-economic data on their situation so as to improve policy-making on issues concerning them.

b) Outstanding issues

The Advisory Committee expresses its strong regret that Directive 43/2000 (Race Directive) has still not been fully transposed into German legislation and that comprehensive anti-discrimination legislation, covering all forms of discrimination, direct and indirect, both from public and private entities, has still not been enacted by the *Bundestag*. The Advisory Committee takes note that the current legislation, despite offering a guarantee of the principles of equality and non-discrimination at federal level and in the various *Länder*, still does not cover in detail certain key areas such as housing, employment, health and access to goods and services. Finally, the Advisory Committee notes that it appears to be difficult, in practice, to obtain reparation for discriminatory or racist acts committed against persons belonging to national minorities or non-nationals.

The Advisory Committee also notes that there continues to be a lack of reliable data to help combat discrimination based on ethnic origin in various sectors and develop effective measures to promote equal opportunities for persons belonging to minorities. It points out that the availability of reliable data on the situation of minorities, broken down according to age, sex and geographical distribution, could lead to a significant improvement in policies to promote equal opportunities in various fields, by making it possible to target more closely the needs of minorities and make the necessary adjustments to the measures relating to them. It is well aware of the opposition in Germany to the gathering of data on ethnic background, given the abuse made of such information in the Nazi period. However, it notes, as already stated in paragraph 31 above, that certain representatives of minorities have, during the visit of the Advisory Committee, come out in favour of the collection of more complete and accurate information on their situation being collected in order to improve policies specific to them.

The Advisory Committee further notes from the information it has received, and even in the absence of detailed statistical data in this respect, that persons belonging to the Roma/Sinti minority continue to find it more difficult than the rest of the population to gain access to employment. This is partly the case because of discrimination against them in accessing the labour market but also because of a lack of skills linked to existing barriers to equal opportunities in the educational system (see remarks regarding Article 12 hereinafter).

The Advisory Committee has also been informed that Roma/Sinti have allegedly been refused services in public places and that there are occasionally tense relations with the police which can take the form of more frequent controls, according to information received by the Advisory Committee.

The Advisory Committee further notes that there appears to be no overall policy to move towards increased equal opportunities for the Roma/Sinti and that the National Social Inclusion Plans do not contain specific measures designed for them even though, according to information reaching the Advisory Committee, their situation in various fields seems to be noticeably worse

than that of other groups and the majority population (see also the comments regarding Article 6 and 12).

Recommendations

The Advisory Committee urges the authorities to ensure that comprehensive anti-discrimination legislation soon be enacted and that the debate in the Bundestag be echoed in broad public debate on the issue of discrimination. The fight against discrimination, as the German authorities have stressed, necessitates public awareness-raising and the Advisory Committee therefore encourages the authorities to continue and step up their efforts in this field.

The Advisory Committee urges the authorities to consider the possibility to collect socio-economic and other data using methods offering adequate personal data protection, such as, for instance, sociological studies or surveys. It would also be possible to carry out studies which do not require the individuals surveyed to be identified or which offer a guarantee that any identifying information would be destroyed. Such studies should be based on full consent of the people concerned and the process should provide them with all the necessary information.

The Advisory Committee strongly urges the German authorities to address as a matter of priority the disadvantages, due to discrimination, encountered by persons belonging to the Roma/Sinti minority and to step up efforts to narrow the gap between persons belonging to the Roma/Sinti minority and the rest of the population. The Advisory Committee is of the opinion that the authorities should give thought to a targeted and long-term strategy at national level to improve the situation of the Roma and Sinti, possibly by including the latter in the target groups listed in the National Social Inclusion Plans prepared in the context of the European Union.

It also believes that the authorities could consider the possibility, already recommended by the European Commission against Racism and Intolerance (ECRI), of introducing a system of registration in connection with police checks that would enable individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.

Gathering of crime-related data

Findings of the first cycle

The Advisory Committee encouraged the federal authorities and the *Länder* to review the various methods used by the *Länder* to gather crime-related data of an ethnic nature in order to ensure that such methods were fully in compliance with the principles set out in Article 3 of the Framework Convention.

Present situation

a) Positive developments

The Advisory Committee notes that the Federal Criminal Police Office (BKA) has assured the Federal Data Protection Commissioner that it did not maintain any database containing information of an ethnic nature. Following an enquiry by the Commissioner in four *Länder* in 2004, it was found that in one Land, there were individual notes mentioning the ethnic background of certain suspects or persons held on remand. The Federal Commissioner requested that this information be deleted.

A Directive was issued in 2005 to the police by the Bavarian Ministry of the Interior forbidding the use of substitute terms in police files, further to the prohibition in 1998 of using ethnic characteristics, such as “Roma/Sinti” in police description forms.

b) Outstanding issues

The Advisory Committee is concerned about allegations of undue use of substitute descriptions which make it possible to identify the ethnic origin of suspects or perpetrators, especially in cases when this type of information was provided by the police to the media (see comments related to Article 6). The Advisory Committee was informed, in particular, about the use in

certain police files of the expression “mobile ethnic minority” to refer to the Roma/Sinti, despite the above-mentioned circular from the *Land* of Bavaria.

The authorities informed the Advisory Committee in the course of its visit that while no database containing information of an ethnic nature was kept, information could be gathered in particular cases where such information was necessary, for example in order to combat crime which would be, according to the authorities, specific to persons belonging to a particular ethnic group. The Advisory Committee has also received information indicating that the names of people belonging to the Roma/Sinti communities have on some occasions been recorded in police files for the purposes of crime prevention, solely on the basis of their belonging to these minorities. The Advisory Committee believes, however, that associating specific types of criminality with a particular ethnic group is not acceptable under the Framework Convention.

Recommendations

The Advisory Committee urges the authorities to continue to be vigilant as regards the gathering of data on the ethnic background of criminal suspects. The authorities should ensure that this does not lead to discrimination against persons belonging to certain groups or to their being stigmatised.

15. Hungary

Opinion adopted on 9 December 2004

Institutional and legal changes relating to discrimination

Findings of the first cycle

In its first Opinion on Hungary, the Advisory Committee noted that the legal framework concerning equality and prohibition of discrimination contained shortcomings in place and that effective remedies needed to be developed in a number of settings, such as education, job advertisements and housing. The Advisory Committee therefore urged the Hungarian authorities to adopt new legislation and to strengthen enforcement procedures.

Present situation

a) Positive developments

The Advisory Committee welcomes the numerous measures taken by the Hungarian authorities since the first monitoring cycle to improve the legal and institutional framework and enforcement procedures in the area of equality and the prohibition of discrimination. Law CXXV on Equal Treatment and the Promotion of Equal Opportunities, adopted in December 2003, thus contains a general ban of all forms of direct and indirect discrimination based in particular on national belonging or affiliation to a particular minority or based on native language. This law has a broad scope of application, covering numerous fields such as employment, social security and medical care, housing, teaching, education, training and also the provision of goods and services.

The Law CXXV on Equal Treatment contains three major innovations: firstly, it creates a system (*actio popularis*) whereby associations are able to bring appeals against the perpetrators of discriminatory acts whose victims are not identifiable; secondly, it reverses the burden of proof in cases of discrimination (apart from cases that are subject to criminal or minor offence proceedings); thirdly, it sets up a new administrative body at national level to oversee the application of the law.

However, at the time of adopting the present Opinion, the Advisory Committee is not yet able to assess how the Law CXXV on Equal Treatment, which entered into force in January 2004, is working in practice, since no cases based on this law have yet run their full course. Nevertheless, the new administrative authority will need to be given very broad powers, since it will be able to deal with any discriminatory act in any field covered by the law. It will also be

able to pronounce sanctions against any person or body which violates the ban on discrimination.

Article 5 of Law XXII of 1992 on the Labour Code was amended in 2001 in order to ban clearly any form of discrimination against employees and, in disputes, to require the employer to prove that he or she has not violated the ban on discrimination.

In 2001, the Ministry of Justice, in co-operation with the Government Office for National and Ethnic Minorities and the Roma national minority self-government, supported the creation of a network of lawyers, present in every Hungarian county, available to help Roma people who are discriminated against. This service is free for the Roma because the lawyers' and court fees are paid by the State. Since it was set up, this network has been involved in more than 1,700 cases in a vast range of fields and its activities, which suggest that many Roma are unaware of even their most fundamental rights, are considered to be necessary and useful by many of those concerned.

Finally, numerous institutional changes have been made in Hungary since 2002, mainly aimed at promoting the social integration of the Roma. The post of State Secretary for the Roma was created, for example, and the Ministry of Education has developed a structure to promote the integration of disadvantaged persons, particularly Roma, run by a Ministerial Commissioner. In February 2004, the post of Ministerial Commissioner for Roma Affairs was also created within the Ministry of National Cultural Heritage. The Council for Roma Affairs, a coordinating body without decision-making powers, was set up in 2002. A Government Office for Equal Opportunities was created in January 2004 and, since October 2004, it has been attached – along with the Government Office for National and Ethnic Minorities – to the new Ministry for Youth, Family and Equal Opportunities.

b) Outstanding issues

The Advisory Committee notes that, in order to avoid duplication of work, greater effort is required to co-ordinate the large number of authorities involved in and resources allocated to the fight against discrimination and the promotion of social integration of disadvantaged persons, particularly Roma. Improvements are also required in the area of monitoring so that results can be measured more effectively. Following the entry into force of Law CXXV on Equal Treatment and the new remedies it offers to victims of discrimination, numerous awareness-raising and information measures are needed. The new administrative authority was meant to be operational by January 2005, but fears have been expressed that this is likely to be delayed. Several people have criticised the fact that it will not be sufficiently independent, since it will be working under the supervision of the Government, even though it is stipulated that it should not receive instructions as to how to exercise its powers.

Recommendations

Hungary should try to improve co-operation and co-ordination between the different bodies involved in the fight against discrimination, particularly the Parliamentary Commissioner for National and Ethnic Minorities, whose contribution remains crucial. Hungary should endeavour to set up as quickly as possible the administrative body provided for in Law CXXV on Equal Treatment and to ensure it undertakes its duties with the necessary independence.

Situation of the Roma

Findings of the first cycle

In its first Opinion on Hungary, the Advisory Committee welcomed the authorities' decision to develop medium- and long-term plans of action in favour of the Roma minority, which it said gave rise to high expectations. In its corresponding Resolution, the Committee of Ministers pointed out that, despite the efforts made, real problems remain, affecting the Roma, notably regarding acts of discrimination.

Present situation

a) Positive developments

The package of medium-term measures adopted by the Government in 1999 form a comprehensive strategy to improve the living conditions and social position of the Roma. They focus particularly on education, culture, health care, housing and the fight against discrimination. The Advisory Committee is pleased to note that this package of measures is regularly reviewed and supplemented wherever necessary, as was the case in 2001, for example. In January 2002, the Hungarian authorities also devoted an international conference to the evaluation of the package of medium-term measures. There are plans to launch a governmental programme designed to promote equal opportunities for the Roma minority which will run until 2006 as an extension of the package of measures, with special emphasis on education, quality of life, equality before the law, employment and communication.

As part of co-operation between Hungary and the European Union aimed at defining a common action against social exclusion, the Ministry of Health and Family and Social Affairs has drawn up a Joint Inclusion Memorandum, which was signed by the Government and the European Commission in December 2003. This document analyses the needs of persons facing exclusion – particularly the Roma – in areas such as housing, employment and health care. A national action programme on social inclusion, which aims to meet the needs identified, should be finalised by the end of 2004.

b) Outstanding issues

Although improvements have been made through the numerous measures taken by the authorities over several years, the most fundamental rights and freedoms of the Roma continue to be violated in Hungary in many different settings.

Many Roma, for example, are still denied access to decent housing. As pointed out in the Joint Inclusion Memorandum, which is based on several different studies, segregation in the housing sector seems to have increased in recent years. More and more Roma are living in sub-standard housing and/or estates with inadequate facilities. These different forms of segregation are mostly found at the local level, where Roma have been prevented several times from moving into certain districts by the resistance of the local population and/or local authority action. At the same time, there are credible reports of a recent rise in the number of forced evictions – mostly of Roma – reportedly carried out without respecting the fundamental rights of the persons concerned. This phenomenon may partly be explained by the amendment adopted in 2000 concerning the 1993 Law on Housing, which considerably reduced tenants' rights.

With regard to access to health care and the state of health of the Roma population, the lack of data and government-commissioned research makes it difficult to give any kind of assessment, although some studies and surveys suggest that the life expectancy of Roma is considerably shorter than that of the rest of the population and that many Roma refuse to go to hospital because of alleged prejudice against them by hospital staff. Furthermore, some NGOs say they have identified cases of Roma women being sterilised without their prior informed consent. One such case is even pending before the United Nations Committee on the Elimination of All Forms of Discrimination against Women.

According to the Joint Inclusion Memorandum, the unemployment rate for Roma is three to five times higher than that of the rest of the population. The authorities have taken commendable initiatives to counter this phenomenon, particularly by promoting the training and recruitment of Roma. However, one of the main obstacles is the fact that anti-Roma feelings and negative stereotyping of this minority remain fairly widespread, causing many employers to discriminate against Roma in their recruitment procedures (see comments on Article 6, below).

Recommendations

Hungary should step up its efforts to enable all Roma to enjoy decent living conditions, particularly by firmly opposing segregation practices that have recently occurred at the local level and by limiting the number of forced evictions.

Hungary should endeavour to gather more data on the Roma population's state of health and access to health care, particularly by conducting research, opinion polls or using other scientific methods. Serious investigations should be carried out into the alleged sterilisation of Roma women without their prior informed consent.

Hungary should continue its efforts to combat the chronic underemployment of the Roma people. To this end, the authorities should ensure that the provisions banning discrimination in access to employment are properly enforced and pay close attention to measures aimed at countering anti-Roma prejudice.

16. Ireland

Opinion adopted on 6 October 2006

Equality legislation and mechanisms

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that further steps could be taken to enhance the effectiveness of equality legislation and related institutions.

Present situation

a) Positive developments

Ireland has further strengthened its equality legislation by adopting the Equality Act in 2004. The Act, the purpose of which is also to transpose the EU “equality directives” in the domestic law, contains a range of commendable provisions, including in relation to the burden of proof and other matters, extending the protection offered by the Equal Status Act of 2000 and the Employment Equality Act of 1998. The relevance of the equality legislation for groups covered by the Framework Convention is evidenced by the fact that cases brought under “the Traveller community ground” constitute the largest category of the Equality Authority’s case-files, while race is the most common ground invoked in cases brought to the Authority under the Employment Equality Act. The adoption of the European Convention on Human Rights Act in 2003, aimed to incorporate the Convention in the Irish law, was another significant step that benefits also persons belonging to minorities.

The Advisory Committee commends the fact that the institutional framework to combat discrimination is advanced, and key actors include not only the Equality Authority and the Equality Tribunal, the statutory bodies set up under equality legislation, but also the National Consultative Committee on Racism and Interculturalism (NCCRI) and the Human Rights Commission, both of which have launched a range of valuable initiatives to advance non-discrimination and other rights of Travellers and persons belonging to other minorities. Ireland’s state report also details a number of sectoral initiatives, including in accommodation, education and employment, which merit decisive follow-up.

Ireland is committed to being at the forefront in efforts to ensure strong equality legislation, and the Advisory Committee is encouraged by the fact that there is an on-going discussion on how to strengthen further the guarantees in this field, including valuable proposals to introduce specific legislative provisions on positive duties to promote equality and to extend the protection of non-discrimination guarantees to public functions going beyond the concept of “service”.

b) Outstanding issues

While commending the expertise and the commitment of the bodies established to advance the implementation of equality legislation, the Advisory Committee is concerned that the significant delays in the processing of cases by the Equality Tribunal hamper the accessibility and effectiveness of this remedy, and there is therefore a clear need to bolster the capacity of the Tribunal to carry out its work. In this respect, it is encouraging that the Ten-Year Framework Social Partnership Agreement 2006-2015, proposed in June 2006, highlights the removal of the current backlog of cases before the Equality Tribunal as a priority.

In 2003, the adjudication of discrimination cases involving licensed premises was transferred from the Equality Tribunal to District Courts. As this is an area where cases of discrimination towards Travellers have been particularly frequent, the transfer could have clear implications for efforts to combat discrimination, and the Advisory Committee pointed already in its first opinion to the problems that such a transfer, which had by then been proposed, could involve. The Advisory Committee understands that, in the District Court, compensation awarded for victims of discrimination may be markedly higher than those given by the Equality Tribunal, and the Committee is aware of the Tribunal's capacity problems (mentioned above). However, the Advisory Committee notes that the transfer could also have negative implications for the accessibility, affordability and flexibility of the process, and it refers in this connection to the reports suggesting that, since the transfer, there has been a clear drop in the number of discrimination cases brought by Travellers concerning licensed premises.

Recommendations

The Irish authorities should bolster the capacity of the Equality Tribunal in order to reduce delays in the processing of cases and to ensure the effectiveness of the Tribunal. The authorities should also, in co-operation with all stakeholders, evaluate the impact of the transfer of jurisdiction over discrimination cases concerning licensed premises, and, as necessary, review the transfer decision in order to ensure an accessible, affordable and effective remedy for such cases.

Implementation of equality legislation*Findings of the first cycle*

In its first Opinion, the Committee expressed concerns about discrimination of Travellers in a wide range of societal settings, including education, employment, health care, accommodation and access to goods and services.

Present situation

a) Positive developments

The Advisory Committee welcomes the commitment of the Government to combat discrimination. It welcomes the National Action Plan against Racism, issued in January 2005. The Plan was drawn up through an inclusive process, and contains a range of important proposals, the implementation of which should be carefully monitored, evaluated and resourced.

The Committee also recognises that an impressive range of sectoral programmes have been launched to advance effective equality of Travellers in the fields highlighted by the Advisory Committee.

b) Outstanding issues

There remains concern that the various sectoral programmes introduced to ensure equal treatment of Travellers have had only limited impact. For example, discrimination in the field of employment, coupled with problems they face in education (see related comments under Article 12) and other related areas, continues to hamper efforts to ensure their equal access to labour market. As was recognised in the March 2006 Report of the High-Level Group on Traveller

Issues, Travellers “are discouraged from seeking mainstream employment by discrimination, hostility and the fear of rejection”.

In certain other areas, the results of the relevant programmes and projects are yet unclear and, for instance, comprehensive information on the results of the implementation of the Travellers’ Health Strategy (2002-2005) is not yet available, pending the preparation of the all-Ireland National Health Study. The Advisory Committee recalls in this context the importance of involving Travellers in the design, implementation and evaluation of the relevant Government programmes, in order to ensure that they are well-targeted and effective (see also related comments under Article 15).

Recommendations

Ireland is called on to ensure decisive follow-up to the sectoral and other programmes and policies initiated to advance non-discrimination, and to make sure that they are adequately resourced and monitored in co-operation with minority representatives and others concerned.

Traveller women

Present situation

The Advisory Committee is concerned about the situation of many Traveller women, who are often particularly exposed to inequalities in key fields, ranging from accommodation (see comments concerning removals under Article 5) to health. In many areas, however, the evaluation of their situation is hampered by lack of data (see related comments above under Article 3). The Advisory Committee finds it promising that the forthcoming National Women’s Strategy is expected to include objectives related to minority women.

Recommendations

The Advisory Committee considers that the gender dimension needs to be taken into account in the design and implementation of all minority initiatives, including in terms of data collection, with a view to ensuring Traveller women’s full and effective equality.

17. Italy

Opinion adopted on 24 February 2005

Institutional and legal changes relating to discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that Italian legislation contained provisions against discrimination but pointed at remaining gaps in the protection afforded by civil law and administrative law. It also invited the authorities to ensure that effective remedies were available to all persons who suffer from discrimination and sanctions are applied where necessary.

a) Positive developments

Based on article 42 of Law 40/1998 on Immigration and the Status of Foreigners, a number of institutes for research into discrimination have been created, such as the Institute of the region of Piedmont for Research into Racism, Antisemitism and Xenophobia in Italy.

A decree containing detailed rules about discrimination in respect of race or ethnic origin was passed in July 2003 with a view to transposing the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This decree also provides for the setting up of an Office for the promotion of equal treatment and the fight against discrimination within the Department for Equal Opportunities of the Presidency of the Council of Ministers. This body, which was actually set up in 2004 and whose creation was accompanied by an awareness-raising brochure, is meant to be an institutional point of reference to monitor the effectiveness of the tools to combat discrimination. The Office for the promotion of equal treatment and the fight against

discrimination is to collect individual claims of people potentially discriminated against and will be tasked to assist them in court cases should victims decide to do so.

b) Outstanding issues

Law 40/1998 on Immigration and the Status of Foreigners defines direct and indirect discrimination and prohibits discrimination in a range of fields such as employment, housing, education, training and social services. It appears, however, that the relevant provisions of this piece of legislation are not frequently used in practice and that they focus on the situation of foreigners and immigrants. The Advisory Committee, however, notes that discrimination may also affect Italian citizens, including persons belonging to minorities. Existing provisions against discrimination in the legislation on immigration therefore do not necessarily alleviate the need for a more comprehensive body of civil and administrative provisions in all spheres of life, bearing in mind for example that they do not prohibit indirect discrimination consistently and do not allow for the burden of proof to be shifted to the respondent. Institutes for research into discrimination do not yet seem to have been established in all regions concerned and findings of such institutes could in the future be instrumental to guide state policies to fight discrimination.

In connection with the decree transposing the EU Race directive 2000/43/EC, concerns have been raised that the Office for the Promotion of Equal Treatment and the Fight against Discrimination is not guaranteed real independence and that no provision is made for a genuinely shared burden of proof between the alleged victim of discrimination and the respondent. Moreover, it seems that only those associations that are included in a list drawn up by the Ministry of Equal Opportunities will have standing to litigate on behalf of victims of discrimination, which is likely to entail undue restrictions of this possibility.

Recommendations

Regional institutes for research into discrimination appear to be an interesting tool to acquire a better knowledge of discrimination in practice and the Government could consider the establishment of other such bodies where they are missing. Furthermore, the newly established Office for the Promotion of Equal Treatment and the Fight against Discrimination should be provided with the necessary support. Efforts should also be made to make in the future increased use of the findings of these bodies to develop state policies to tackle discrimination.

The authorities are encouraged to consider the reinforcement of procedural guarantees and legal remedies so as to make existing legal provisions against discrimination more effective and widely used in practice and, where appropriate, complete the legislative framework to fight against discrimination in all fields of life.

Situation of the Roma, Sinti and Travellers

In its first Opinion, the Advisory Committee expressed concern at the housing situation of the Roma, Sinti and Travellers who live isolated from the rest of the population in camps where living conditions and standards of hygiene are very harsh, a state of affairs that compromises their integration and aggravates their socio-economic difficulties. Furthermore, the Advisory Committee's first Opinion and the corresponding Resolution of the Committee of Ministers called on the Italian authorities to consider a comprehensive and coherent strategy of integration *vis-à-vis* the Roma, Sinti and Travellers.

Outstanding issues

The concerns expressed about the deplorable situation of the Roma, Sinti and Travellers in the context of the first monitoring cycle remain valid in the second cycle. Indeed, recent monitoring work conducted by other international bodies and NGOs suggest that Roma still face widespread discrimination and continue to be confronted with particular difficulties in the fields of education, health care, employment and housing.

During its above-mentioned visit to Italy, the delegation of the Advisory Committee visited the unauthorised Roma camp of Casilino 900 in Rome, where hundreds of persons - including many

asylum seekers and refugees from the Balkans - live in shacks lacking the most basic facilities like running water, electricity, regular garbage removal, etc. Credible reports from various NGOs and human rights activists indicate that similar sub-standard housing conditions prevail in most of the camps that now exist in many cities of Italy. In this regard, the fact that a camp is labelled as “authorised” or “unauthorised” by the authorities does not seem to make a real difference as in both cases the local authorities, which are in charge of social and housing issues and are not supported by the state authorities, offer limited intervention to equip the camps with minimal shared facilities like toilets or showers.

As is the case in many other countries, the Roma, Sinti and Travellers living in Italy are by no means a homogenous group. Moreover, their legal situation in terms of residence is complex since it covers a range of situations from illegal immigrants to asylum seekers and refugees, persons with regular residence permits and even Italian citizens. A significant number of Roma, Sinti and Travellers, including adults, who were born in Italy still do not have regularised resident status. Few of them have maintained an itinerant or semi-itinerant way of life linked to their seasonal economic activities and the great majority are unemployed and consider themselves as sedentary people.

In spite of this very heterogeneous pattern, the Advisory Committee is deeply concerned that the integration model widely called for by the authorities is still based on the life in camps, which is presented as an appropriate way through which Roma, Sinti and Travellers can continue to live as “nomads”. In fact, living in such camps isolated from the Italian society renders access to employment, education and health care extremely difficult and the resulting situation cannot be regarded as compatible with the Framework Convention. The absence of serious perspectives of integration especially for Roma who have often lived in such camps for several years render these persons - especially women and children - particularly vulnerable to various kinds of abuses, including human trafficking.

Recommendations

Italy should step up its efforts, as a matter of priority, both at the local and state levels to ensure that Roma, Sinti and Travellers residing in camps enjoy decent living conditions. At the same time, Italy should design, in consultation with those concerned, a comprehensive strategy of integration for Roma, Sinti and Travellers with a view to eliminating the placement in camps and instead ensuring access to housing, employment, education and health care.

In the context of the above-mentioned strategy of integration, particular care should be taken to respond to the specific needs of the various groups concerned. Whereas the improvement of the living conditions of Roma having recently settled in Italy as asylum-seekers or refugees could legitimately be seen as extremely important, stronger emphasis could be put on the preservation and development of the identity of Sinti and Travellers who have been traditionally present in Italy.

18. Kosovo*¹

Opinion adopted on 5 November 2009

Anti-discrimination legislation and practice

Findings of the first cycle

In its first Opinion, while welcoming the adoption of the 2004 Anti-Discrimination Law, the Advisory Committee voiced its concerns about the effectiveness of its implementation in practice. The Advisory Committee noted that *de facto* discrimination of persons belonging to minority communities, in particular Roma and Serbs, persisted in Kosovo*.

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

While recognising the important role of the Ombudsperson's Office in dealing with complaints lodged by persons who claim to be victims of discrimination, the Advisory Committee expressed the hope that the Ombudsperson's Office would be able to work as effectively as a local institution, as had been the case under the then international leadership.

Present situation

a) Positive developments

The Advisory Committee notes that there is a well-developed legal basis providing for equality before the law and prohibition of discrimination. Besides the anti-discrimination provisions contained in the 2004 Anti-discrimination Law, the 2008 Constitution guarantees equality of all and anti-discrimination, *inter alia*, on grounds of language, religion, national origin, race, colour and relation to any community.

The Advisory Committee welcomes that the Kosovo Assembly finally succeeded in appointing the Ombudsperson in June 2009, filling a post that had been vacant for more than three years. The Advisory Committee expects the Ombudsperson to pursue his work independently and effectively, without eroding the trust his Office has built so far amongst minority communities. In the period between 2005 and 2008, about 22% of the complaints received by the Office were lodged by persons belonging to minority communities. They tend to relate predominantly to property issues, malfunctioning of the judiciary and social and economic rights. In this respect, the Advisory Committee appreciates the active approach of the Ombudsperson's Office to raise awareness on its role and competencies amongst the majority as well as minority communities, including through privately-owned media outlets.

The Advisory Committee appreciates efforts made by the relevant stakeholders to find a suitable solution to problems of the electricity supply affecting in particular areas substantially inhabited by the Serbian community. As a result, agreements on the redistribution of the electricity supply have been signed with the Kosovo Energy Corporation (KEK) in a number of villages. It is commendable that, in some localities, household debts were frozen and agreements on monthly payments for electricity consumption reached.

b) Outstanding issues

Despite the valuable work of the Ombudsman's Office and generally its positive image within society, its recommendations sometimes remain unimplemented. In addition, the measures aimed at the reduction of staff within the public administration have also affected the Ombudsman's Office, including its regional offices located in the areas inhabited by persons belonging to minority communities. While noting the general trend towards staff reduction within the public administration, the Advisory Committee considers that any measures in this area should be carried out carefully taking into account the independence of the institution, so as to ensure that they do not have a negative effect on the proper functioning of the Ombudsman's Office, including in the field of minority rights protection.

While welcoming the appointment of the Ombudsperson, the Advisory Committee regrets that it had taken excessively long for the Kosovo* authorities to appoint the Ombudsperson. At the same time, the Advisory Committee notes that the Deputy Ombudspersons have not yet been appointed. As foreseen in Regulation 2006/6, the Deputy Ombudspersons should be appointed from different communities to reflect the ethnic diversity of Kosovo* society.

Many instances of discrimination targeting persons belonging to the minority communities appear to remain unreported. Very few complaints have been lodged before the domestic courts. The reasons behind this unsatisfactory situation are multiple, including lack of awareness of the concept of discrimination and remedies available. Furthermore, some persons belonging to minority communities, in particular Ashkali, Roma and Egyptians, fear reprisals, if they lodge a complaint. There also appears to be a widespread lack of trust amongst the minority communities in the effectiveness of the Kosovo* institutions and the judiciary to deal with cases relating to inequality and discrimination on the ground of belonging to a minority community. Although the 2004 Anti-Discrimination Law imposes an obligation on the authorities to conduct

a public awareness programme on its provisions, no adequate campaign has been carried out in this respect so far.

Problems of electricity supply persist in some areas, mainly in villages inhabited by the Serbian community, in spite of positive achievements in this respect. As a result, many households as well as public service institutions, such as hospitals and public administration encounter difficulties daily. This has contributed to increased inter-ethnic tensions in recent years. Representatives of the Serbian community claim that electricity cuts are the result of discriminatory practices, while according to the authorities, they are not specifically intended to target the Serbian community but also affect villages inhabited by the Kosovo* Albanian population and are reportedly related to non-payment of electricity bills. The Advisory Committee appeals to both sides to take all possible measures to co-operate to put an end to the power supply disconnections.

It appears, according to representatives of some minority communities, that the risk of being discriminated against increases if a person uses the Serbian language in public life. Moreover, the lack of availability of many official documents in minority languages may potentially have a discriminatory effect on persons belonging to certain minority communities in many spheres of life (see also comments in paragraph 172 under Article 10).

Recommendations

It is imperative to ensure the effective and independent functioning of the Ombudsman's Office, including by respecting its independence and by allocating adequate human and financial resources. It is also important to ensure that the recommendations of the Ombudsperson's Office be implemented effectively.

The Advisory Committee urges the authorities to conduct awareness-raising activities amongst the population at large on the guarantees and related remedies provided for in the 2004 Anti-discrimination Law. Legal professionals, including judges and prosecutors, should be provided with targeted adequate training in this respect.

The Advisory Committee urges all stakeholders concerned to co-operate effectively with a view to finding a solution to power supply disconnections without further delay.

The Advisory Committee urges the speedy appointment of the Deputy Ombudspersons.

Freedom of movement and return process

Findings of the first cycle

In spite of local improvements in the field of freedom of movement, the Advisory Committee found the overall situation disconcerting. It noted that a large number of persons belonging to minority communities had been unable to return to their homes due to persisting discrimination and inter-ethnic hostility as well as obstacles as regards access to services.

In its first Opinion, the Advisory Committee also expressed its concern about the situation of persons belonging to minority communities forcibly returned to Kosovo* from Western Europe. It appeared that they had no access to existing assistance schemes and no adequate financial support had been allocated to facilitate their integration. Furthermore, the assistance measures were to be implemented in a flexible way to accommodate the needs of those returnees for whom it was not advisable to return to their original place of residence.

Present situation

a) Positive developments

According to the information available to the Advisory Committee, it appears that there have been signs of improvement as regards the situation in the field of freedom of movement of persons belonging to minority communities, in particular in certain areas of Kosovo*.

Several strategies and policy papers relating to sustainable return of refugees and displaced persons have been issued in Kosovo*. They provide for an institutional framework for managing returns, including support for returnees whose houses and informal settlements have been destroyed. For example, the Strategy for the Integration of Roma, Ashkali and Egyptians, provides for the return of persons belonging to these communities, who fled Kosovo*, to a place of residence according to their wishes.

Considering the number of applications already lodged for return assistance, the Advisory Committee appreciates the efforts made by the authorities to initiate projects aimed at facilitating the return and reintegration of returnees in some localities. According to information received from the Ministry of Communities and Returns, 67 families have already benefited from the support allocated for the implementation of 23 return projects in localities such as Llapllaselle/Laplje Selo, Gjilan/Gnjilane and Fushë Kosovë/Kosovo Polje, in the period from October 2008 to April 2009. Preparations for other reintegration projects are reportedly under way.

b) Outstanding issues

In spite of improvements in the security situation, persons belonging to the Serbian and Roma communities face obstacles in their freedom of movement. Furthermore, the Kosovo* Albanian community is facing difficulties in moving freely in Northern Kosovo*. Some interlocutors, however, consider that this situation is more the result of perceptions and fears amongst the minority communities concerned rather than a real lack of security.

While perceptions and fears may well be causes for the limited movement, the Advisory Committee considers that perceived insecurity is particularly important as it is a result of the overall climate. Consequently, it may have a serious impact on the actual movements and inter-ethnic relations. Persisting inter-ethnic tensions, the absence of effective investigation of ethnically-motivated crimes and language barriers constitute serious obstacles to the freedom of movement. Fear to move freely reportedly varies depending on the municipalities and factors such as social status, place of origin or age of persons belonging to minority communities.

The Advisory Committee is deeply concerned about the continuous unsatisfactory situation as regards sustainable return of refugees and displaced persons to Kosovo*. Many returnees appear not to benefit adequately from reintegration strategies and programmes. Despite the efforts made so far by the authorities to provide for conditions for sustainable return on a voluntary basis, these efforts are insufficient and do not ensure in practice the real possibility for return for those wishing to come back.

The Advisory Committee has received information about the situation of an increasing number of persons belonging to the minority communities being forcibly returned, in particular from some Western European countries to Kosovo*. In the Prizren municipality alone, 800 cases of forced returns were reportedly recorded in the course of 2008. In addition to persons belonging to the Roma communities, who are the main target group, some persons belonging to the Gorani and Bosniac communities have also been affected by forced returns. Since these returnees are often not registered, they are deprived of access to many public services, such as health care, social protection and education. In the absence of any protection and integration measures, many Roma forcibly returned end up in the lead-contaminated camps in Northern Mitrovicë/Mitrovica. In the light of the aforementioned information, the Advisory Committee is deeply concerned about the consequences which forced returns may have on those affected considering their vulnerable situation. Moreover, such forced returns also have a negative impact on the society in general given the limited absorption capacity, difficult socio-economic situation and fragile inter-ethnic relations in Kosovo*. While acknowledging that the responsibility for the decision to implement forced returns lies with the governments of the states from where persons have been returned, the Advisory Committee urges the Kosovo* authorities to ensure full and equal access of forced returnees to basic rights such as healthcare, housing and education. Such access is a prerequisite condition for their safe and sustainable return and effective integration in society.

Assaults on and harassment of returnees of Roma ethnicity have also been brought to the attention of the Advisory Committee. The Advisory Committee is deeply concerned about this situation and considers it essential that necessary conditions in areas such as employment, housing, education, and access to property, are fully met before persons can be returned to Kosovo*, in order to ensure their successful integration.

Recognising the enormous challenges facing the authorities as regards the reintegration of returnees, the Advisory Committee considers that the return process will be problematic if adequate measures in the fields of security, employment, housing, education and access to property and social schemes are not effectively put in place. In particular, the return of Serbs to areas outside the enclaves would be impossible without providing access to quality education in the Serbian language or bilingually. Considering that the main burden for the integration of returnees has to be borne by the municipalities, adequate financial and other resources should be made available to enable them to implement effectively the reintegration programmes. Furthermore, there is a need for effective coordination between the central and local authorities. This also implies harmonisation of assistance packages, the funding of local provisions and the full support of properly trained municipal staff.

Recommendations

More efforts should be made by the authorities to provide conditions for the freedom of movement of persons belonging to minority communities, in particular to the Serbs, Roma and the Kosovo* Albanians in a minority situation, by ensuring effective safety and security conditions as well as by addressing the perceptions and fears of these communities through dialogue and inter-community trust-building measures.

The authorities are urged to demonstrate stronger commitment to the safe and sustainable return process, in particular by providing for effective access to socio-economic and educational rights for returnees. Particular attention should be paid to those forcibly returned. Adequate financial and human resources need to be allocated centrally and locally to implement properly integration strategies.

Access to justice and fair trial issues

Present situation

The Advisory Committee is greatly concerned by the existing obstacles faced by persons belonging to minority communities in accessing justice throughout the territory of Kosovo*. The reasons for this situation are numerous, including lack of financial and technical resources, the permanent backlog of cases as well as the shortage of qualified legal professionals. It appears that, according to statistics provided to the Advisory Committee, two hundred and sixty thousand cases are pending to be reviewed by two hundred and ninety three local and twenty two European judges and ninety prosecutors. A high number of these cases relate to property issues. Moreover, information received by the Advisory Committee suggests that the legal guarantees for prompt and effective review of pre-trial detention and for a trial within a reasonable time have not been always respected, in particular in areas inhabited by minority communities in substantial numbers. Insufficient access to justice within a reasonable time appears therefore to have a disproportionate effect on persons belonging to some minority communities in Kosovo* (see also comments paragraph 44 under Article 1 above).

Recommendations

The Advisory Committee urges the authorities to take vigorous measures to reduce the backlog of cases, in particular those relating to property issues, and to guarantee prompt and effective access to justice and respect for the right to a fair trial, with particular attention paid to the situation of persons belonging to minority communities.

Full and effective equality of Roma, Ashkali and Egyptians

Findings of the first cycle

In its first Opinion, the Advisory Committee called on the authorities to take urgent measures to address the difficult situation faced by the Roma, Ashkali and Egyptians living in lead-contaminated camps in Northern Kosovo*. This health crisis affects to a greater extent children and pregnant women belonging to these communities.

The Advisory Committee noted that persons belonging to the Roma, Ashkali and Egyptians faced serious economic and social problems in the fields of housing, education and employment. The Advisory Committee considered that a more strategic approach to deal with their problems was needed.

Present situation

a) Positive developments

The Advisory Committee welcomes that the 2008 Strategy for the Integration of Roma, Ashkali and Egyptians provides a solid framework for actions to be taken to improve their situation in a number of areas. The possibility to adopt measures with a view to achieving full and effective equality is provided for in the 2008 Constitution and the Law on the Rights of Communities.

While difficulties as regards the registration of some Roma, Ashkali and Egyptians still persist, the Advisory Committee notes the initiatives taken by non-governmental organisations, often supported by the international community, to register those concerned.

b) Outstanding issues

While acknowledging the overall poor economic conditions in Kosovo*, the Advisory Committee is deeply concerned about the persisting difficult socio-economic situation faced by persons belonging to the Roma, Ashkali and Egyptian communities. These groups are affected to a much greater extent by poverty than other communities. They experience an uneven access to the labour market, housing and school facilities, often due to discrimination and anti-Roma sentiments. Hostile attitudes towards these groups amongst the population have reportedly resulted in obstacles to their freedom of movement and affect their exercise of other fundamental rights. Difficulties in obtaining identity and other documents, such as birth certificates, hinder their access to property, health care and social services. Much stronger commitment and urgent action are therefore necessary on the part of the authorities to address the needs of these communities.

The Advisory Committee is deeply concerned about the fact that no appropriate solution has been found to date for those Roma, Ashkali and Egyptians who live in the lead-contaminated camps in Northern Kosovo*. Their exposure to lead represents a serious and possibly irreversible health risk. It is a positive development that some families have returned to the partly reconstructed Roma Mahala settlement located in Southern Mitrovicë/Mitrovica. However, a considerable number still continue to live in the camps in sub-standard housing conditions, often without proper sanitary facilities and adequate medical care. This situation has prompted the reactions of the Ombudsperson and of the Council of Europe Commissioner for Human Rights who have requested immediate and sustainable relocation of this population to a safe location. Some interlocutors have suggested that their return has been complicated by the unwillingness of municipal authorities within Kosovo* to provide Roma with land as well as certain reluctance of some Roma to move South of the Ibar river. This would, in their view, lead to a worsening of their living conditions and of their freedom of movement. In addition, the lack of clarity as to the competent authority in charge of this issue was mentioned as another obstacle to finding an appropriate solution. While being aware of the complexity of the situation, the Advisory Committee considers that a response to this persisting humanitarian and environmental disaster must be found as a matter of urgency. A genuine will of all actors involved coupled with adequate funding is a condition *sine qua non* for an appropriate solution. At the same time, it is encouraging that, following the visit of the Council of Europe

Commissioner for Human Rights to Kosovo*, initiatives were undertaken to seek a solution to this serious human rights problem.

Recommendations

Resolute measures must be taken to assess, monitor and combat discrimination against persons belonging to disadvantaged communities, such as the Roma, Ashkali and Egyptians, in employment, access to housing, social and health services.

The Advisory Committee calls on the authorities to provide without further delay identity and other documents to persons belonging to the Roma, Ashkali and Egyptian communities and to provide them with equal access to all relevant rights.

The Advisory Committee strongly urges UNMIK and the Kosovo* authorities to take resolute measures to find and implement, in consultation with the community representatives concerned and, as a matter of utmost urgency, an adequate and sustainable solution for the Roma, Ashkali and Egyptian population of the lead-contaminated camps in Northern Kosovo*.

19. Latvia

Opinion adopted on 18 June 2013

Article 4 of the Framework Convention

Protection against discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee invited the authorities to take the necessary steps to ensure that the anti-discrimination legislation fully covered all relevant areas and that the implementation of the legislation was duly monitored, including through collecting data on reported cases of discrimination. While welcoming the establishment of the Office of the Ombudsman, it called on the authorities to provide the Office with adequate resources to ensure its effective operation. In addition, it considered that resolute measures should be made to address the manifestations of discrimination faced by the Roma in sectors such as employment, education and access to public services.

Present situation

a) Positive developments

The Advisory Committee is pleased to note that Latvia has made significant progress since the first monitoring cycle in terms of its anti-discrimination legislation, having adopted a wide range of amendments to various pieces of legislation, broadening the grounds on which discrimination is prohibited and completing transposition of the EC Equality Directives. It is further pleased to note that the Office of the Ombudsman, which is entrusted with the main responsibility for the implementation of the principle of equal treatment and designated as Latvia's specialised body in line with the Race Equality Directive, is increasingly being consulted by members of the population. According to the office, its advice was sought 4 600 times in 2011, including by phone, and 6 100 times in 2012. The number of officially lodged complaints to the Ombudsman averages at about 20 per month, few of which, however, relate to allegations of discrimination. The Ministry of Culture, whose Department for Society Integration Affairs took over responsibilities related to society integration issues and the promotion of civil society on 1 January 2011, is also tasked with "ensuring the observance of rights of minorities, including Roma, by facilitating elimination of racial and ethnic discrimination."

b) Outstanding issues

Despite the above-mentioned amendments to over 30 legal acts, providing for varying degrees of protection in the different areas of law, such as consumer rights protection, social security and commercial activity, no overall comprehensive legislative framework prohibiting racial discrimination in all fields of life has been developed. The Advisory Committee is particularly concerned by the fact that discrimination on grounds of nationality or citizenship is not prohibited by any of the acts, despite the particular situation in Latvia where the Ombudsman concluded in 2008 that there were a considerable number of differences in rights between citizens and the so-called “non-citizens”, such as regarding access to public employment or land property, which could not be considered proportional. In addition, the number of cases of alleged discrimination being brought to the attention of the Ombudsman or any of the responsible State Inspectorates, such as the State Education Quality Inspectorate or the Health Inspectorate, or indeed the Courts, remains extremely low, despite ample reports of such incidents, in particular concerning Roma. This seems to suggest that the general appreciation for the multiple manifestations of discrimination in daily life among responsible officials as well as the population at large remains underdeveloped.

The Advisory Committee further finds that the Ombudsman Office, given its wide remit of responsibilities, remains understaffed and under-resourced as the budget has not been increased since substantial cuts were made in 2009 and 2010, following the economic crisis. In addition, it notes with regret reports from a number of minority representatives and independent observers that trust in the influence and abilities of the Ombudsman among the population and persons belonging to national minorities in particular, is still very low, and that there is a general perception that the current Ombudsman, appointed in March 2011, has little interest or desire to become involved in potentially contentious public debates surrounding issues of relevance to national minority communities. The Advisory Committee considers that the existence of efficient monitoring mechanisms on issues pertaining to non-discrimination and effective equality, such as an active and independent Ombudsman Office, is a prerequisite for the full implementation of the Framework Convention.

The Advisory Committee notes in this context that, despite expressing his concern about the situation of Roma in Latvia who continue to face discrimination in many spheres of life, the Ombudsman is considered to have made only limited concrete contributions to promote their full and effective equality in society. It finds that urgent measures must be taken to raise the awareness of the Ombudsman’s mandate and legal remedies available in case of discrimination among the population and in particular among groups who are considered especially exposed to possible discriminatory attitudes, such as the Roma.

Recommendations

The Advisory Committee calls on the authorities to strengthen the legislative framework prohibiting discrimination to include discrimination on grounds of citizenship and to ensure that the existing mechanisms against discrimination work efficiently.

The Advisory Committee further calls on the authorities to increase the human and financial resources of the Ombudsman Office to promote its ability to independently and effectively perform its important mandate, and to increase efforts to promote awareness and confidence among the population, in particular persons belonging to national minorities, to approach the Ombudsman and other responsible institutions, including law enforcement and the judiciary.

In addition, comprehensive training and awareness-raising activities must be organised for all relevant public officials, including in law enforcement, social services, and the judiciary, to ensure that manifestations of discrimination are adequately identified and effectively sanctioned through the available legal remedies.

Collection of data and promotion of effective equality

Findings of the first cycle

In its first Opinion, the Advisory Committee called on the authorities to identify appropriate means to better assess the situation related to access to rights of persons belonging to national minorities, including as regards their economic and social situation, with a view to developing more targeted measures to promote full and effective equality in society.

Present situation

a) Positive developments

The Advisory Committee is pleased to note the wide range of information, including on education and income levels in the population, gathered during the census in 2011, which is crucial for targeted policy planning and development. It further welcomes the appreciation expressed by relevant officials in the Ministry of Culture that baseline data on the situation and particular challenges faced by the different groups in society is necessary in order to develop targeted programmes for integration and the promotion of equality. In this context, it welcomes in particular the engagement of the Society Integration Foundation in a variety of research activities related to discrimination and its manifestations in Latvia, which are to commence in summer 2013 with support from independent experts and civil society.

The Advisory Committee further notes with interest that specific and concrete measures for the promotion of effective equality of Roma are included in the Action Plan on the Guidelines on National Identity, Civil Society and Integration Policy (2012-2018), including the establishment of a system to collect and collate statistical data on the situation of Roma in socio-economic areas of life. The Advisory Committee expects that these plans will be supported with adequate human and financial resources and implemented in close consultation with representatives of Roma communities so as to effectively promote the equality of members of these groups, including in areas such as employment, housing and social assistance. It is pleased to note the establishment of a Roma Advisory Council in the Ministry of Culture to ensure the effective co-ordination of project activities with the community.

b) Outstanding issues

There is still no systematic collection of information by relevant institutions on issues involving systemic inequalities among different groups in society. The Advisory Committee believes that such gathering and evaluation of data would significantly raise the awareness of relevant officials and service providers of the current challenges faced by different groups in society and the most effective methods of addressing them. With regard to Roma, the Advisory Committee regrets that the initiatives planned to promote their inclusion in important spheres of life such as education, housing and health care in the context of the special National Plan on Roma (2007 – 2009), were discontinued, as only parts of the pledged funds in 2008 and 2009 were allocated. It further notes the assessment, prepared by the Ombudsman Office in August 2012, of the purposefulness and effectiveness of usage of EU and national budgetary funds allocated for the

promotion of Roma rights, which indicates that the exclusion of Roma was not systematically addressed and that funds had mainly been spent on short-term cultural events for small groups of people, without adequate control mechanisms for the allocation of funds and without effect on the promotion of effective equality of Roma. The Advisory Committee welcomes the fact that this assessment was made and expects that it will be effectively taken into account when planning and implementing further activities aimed at the promotion of equality and integration of Roma (see above comments).

Recommendation

The Advisory Committee reiterates its recommendation to develop appropriate methods, in line with international and national data protection standards, of collecting and assessing information on the access to rights of persons belonging to national minorities to ensure that targeted measures can be taken to promote their full and effective equality, in line with Article 4 of the Framework Convention.

Equality of “non-citizens” and the naturalisation process

Findings of the first cycle

In its first Opinion, the Advisory Committee considered that the exclusion of Latvia’s large number of “non-citizens” from the application of key provisions of the Framework Convention, by virtue of Latvia’s Declaration upon ratification, was problematic from an equality point of view and invited the authorities to consider other criteria, such as permanent and legal residence in the country, to define the scope of the rights provided to persons identifying themselves with a national minority. It further observed that the Latvian language proficiency requirements were perceived as imposing a major obstacle in the naturalisation procedure and invited the authorities to ensure that applicants could effectively prove their knowledge of the Latvian language and their genuine desire to integrate in Latvian society. In addition, it considered that more resolute efforts were required to improve the accessibility and quality of Latvian language courses.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that research is undertaken by the Naturalisation Board of the Office of Citizenship and Migration Affairs into the opinions of “non-citizens” regarding the naturalisation process (in 2010) as well as into the reasons why the number of applications for citizenship has remained low since 2007 (in 2012). It expects that the results of these surveys will be taken into account in order to effectively address the obstacles encountered by persons wishing to acquire Latvian citizenship so as to effectively promote their opportunities to become Latvian citizens. By 28 February 2013, 140 069 persons had been granted citizenship by decree of the Cabinet of Ministers since the beginning of the naturalisation process on 1 February 1995, including 14 198 children. The Advisory Committee is pleased to note the organisation of monthly information days at the exam centres in Riga, Liepāja and Daugavpils, organised by the Office of Citizenship and Migration Affairs, as well as the running of a free hotline that provides information related to the naturalisation procedure.

The Advisory Committee further notes that the procedure for submitting an application for acknowledgement of a child as a Latvian citizen was simplified in July 2011 by Cabinet of Ministers Regulation, requiring fewer documents and facilitating the

submission of the application directly at the registry office, jointly with the registration of birth. In addition, amendments to the Citizenship Law were adopted in May 2013, providing for further simplifications in the procedures for naturalisation, such as the possibility for only one parent to apply for acknowledgement of a child as Latvian citizen, as well as an increase of categories of applicants who are to be exempt from the testing of Latvian language, history and culture. The Advisory Committee expresses its expectation that the adoption of amendments to the Citizenship Law will effectively address some of the obstacles to the acquisition of Latvian citizenship that still remain for the so-called “non-citizens” and will lead to a genuine facilitation of the process. It considers noteworthy in this context that only 1.7% of the “non-citizens” who participated in the above survey considered lack of interest as a reason for “non-citizens” not acquiring citizenship, implying that the vast majority of the so-called “non-citizens” do wish to be naturalised and become citizens of Latvia.

b) Outstanding issues

The Advisory Committee is deeply concerned by aspects of the recently adopted amendments to the Citizenship Law which favour ethnic Latvians and Livs in their access to Latvian and dual citizenship. It finds that the introduction of the notion of ‘constituent nation’, which first appears in the recently adopted Integration Guidelines (see below comments on Article 6) and has resurfaced in the discussions related to the indication of ethnic origin in identity documents, is inappropriate in the current environment and likely to further antagonise parts of the population. The Advisory Committee further notes that the Latvian Constitution does not contain such differentiation but refers to the People of Latvia, including all citizens, as holders of sovereign power. It appeals to the authorities to maintain and promote inclusive citizenship policies that encourage the naturalisation of all “non-citizens”, irrespective of their ethnicity, in full accordance with Article 4 of the Framework Convention. In addition, it regrets that dual nationality is accessible for citizens of selected countries only, such as EU and NATO member states, and that recommendations to automatically grant citizenship to all children born in Latvia who would otherwise be stateless were not taken into account. The Advisory Committee considers that such a provision would be squarely in line with Articles 3 and 7 of the Convention on the Rights of the Child as well as Article 1 (1)(a) of the 1961 Convention on the Reduction of Statelessness. Lastly, it is concerned by the fact that the decision to refuse citizenship, which in the previous Law had to be established through court, now rests with the Government, without possibility for appeal.

The Advisory Committee acknowledges the view of the Latvian authorities that the status of citizens is naturally different from that of “non-citizens” and that the level of rights attached to the latter must not be raised to achieve effective equality, as this could demotivate “non-citizens” from seeking naturalisation – which is considered the natural solution to the temporary status of “non-citizen”. It is concerned, however, by tendencies that point towards an increase in the levels of inequality between citizens and “non-citizens”. Access to employment as a municipal police officer, for instance, has been barred to “non-citizens” as of 1 March 2011. The fact that EU citizens are at the same time gaining increasing rights in Latvia, including with regard to access to public employment and participation in local elections (see below comments on Article 15) sharpens the sense of inequality among “non-citizens” as they find it difficult to comprehend that Latvian citizenship is considered a precondition for their accessing an increasing number of positions and rights, while it is not for other non-citizens, who often have much looser ties with and shorter periods of legal residence in Latvia. The

Advisory Committee considers this approach to negatively affect the overall sense of equality in society, particularly as no efforts have been made to provide adequate reasoning to the affected part of the population, which is detrimental to the goal of integration.

The Advisory Committee further is concerned by the lack of progress in resolving the status of “non-citizens”. While they may indeed have the right to naturalise “at any moment”, as argued in the State Report, considerable obstacles still exist for the enjoyment of this right. The above-mentioned survey of 2012 indicates that a non-negligible number of persons do not have sufficient information on the naturalisation procedure and levels of knowledge required for the Latvian language and history examinations, in particular within families where no member holds Latvian citizenship. Information on naturalisation is obtained primarily through friends and acquaintances (33.3%) with a relatively small proportion (15.5%) obtained via mass media. Given the established and publicly acknowledged divide between language groups in society, the Advisory Committee considers that much more targeted outreach and public information campaigning must be undertaken to ensure that all persons who may be interested are duly informed and indeed encouraged to apply for naturalisation. The Advisory Committee further notes that close to half of the respondents indicated that their naturalisation had been delayed because they lacked the confidence to go through the procedure. This, in view of the Advisory Committee, further suggests that more positive and reassuring messages should be circulated about the procedure and levels of examinations. The Advisory Committee welcomes in this context the introduction of on-line trial tests which can be used to acquaint applicants with the established requirements. Alternative methods of encouragement and promotion of self-confidence, however, must be identified for the elderly population, which is less inclined to use the Internet.

The Advisory Committee further notes with concern that the percentage of applicants failing the language test has averaged at around 40% in the last years, and that available language courses organised by relevant institutions are reportedly still insufficient in number and usually over-enrolled and wait-listed. It expects that the Latvian authorities will increase the number of language courses, which considerably fell following the economic crisis in 2008, to ensure that active Latvian language knowledge, in particular amongst the adult population, is adequately enhanced. It considers that resource allocation for language learning must be prioritised over funding provided for inspections operated by the State Language Centre (see also comments under Article 10) and notes in this context that the budget for the number of inspectors and inspections appears to have been significantly less affected following 2008.

Lastly, the Advisory Committee expresses its deep concern at the persistently negative public debate surrounding “non-citizens” and their willingness or lack thereof to acquire Latvian citizenship. Following the collection of some 12 000 signatures in support of the granting of automatic citizenship to all “non-citizens” who don’t opt out, the Central Election Committee voted against the organisation of a referendum on the issue and changes have been made since to the Law on the Organisation of Referenda. The Constitutional Court is currently reviewing the question whether the CEC overstepped its mandate when considering the constitutionality of such a possible referendum. The Advisory Committee notes with concern that this debate is hardening views on both sides and that the issue of loyalty to the Latvian state and independence is increasingly being raised against the so-called “non-citizens”. Given the practical obstacles to naturalisation that remain for a sizeable part of the “non-citizen” population (see above),

the Advisory Committee considers that urgent efforts must be made by authorities to change the public debate into a more constructive discussion on how to encourage “non-citizens” to apply for naturalisation and genuinely welcome them as citizens of Latvia. It notes in this context that the percentage of “non-citizens” in the different parts of Latvia varies significantly and is particularly low in regions such as Rezekne, where concerted efforts by the local authorities have been made to promote the integration of national minorities with respect for diversity.

Recommendation

The Advisory Committee urges the authorities to take all necessary measures to actively promote and facilitate the naturalisation of the “non-citizens” through targeted information and training campaigns as well as the dissemination of positive and inclusive messages in the public sphere. Attention must be paid to ensure that the new Citizenship Law is implemented in a non-discriminatory manner and does not disproportionately curtail access to rights under the Framework Convention.

20. Liechtenstein

Opinion adopted on 1 October 2004

Promotion of tolerance and fight against discrimination

Findings of the first cycle

During the first monitoring cycle, the Advisory Committee attached importance to promotion by the authorities of a spirit of tolerance and mutual respect between all persons living on the territory of Liechtenstein. It added that the authorities should try to remedy any possible integration difficulties certain groups may encounter because of religious or cultural differences.

Present situation

a) Positive developments

The Advisory Committee notes with satisfaction that the State Report contains relatively detailed information on the composition of the population and the characteristics of the various constituent groups. It also welcomes the fact that Liechtenstein has included information in its State Report on measures taken to improve the integration of foreign nationals and prevent racism and discrimination, even though the Government does not consider these groups as national minorities.

In this connection, the Advisory Committee recalls that legal provisions and other measures aimed at combating discrimination and promoting effective equality, a spirit of tolerance and intercultural dialogue must not themselves constitute a source of unjustified distinctions but protect all individuals against any form of discrimination on the grounds of language, culture, ethnic background or religion. These provisions and measures are therefore also covered by Articles 4 and 6 of the Framework Convention, the scope of which cannot be restricted to national minorities alone.

The Advisory Committee welcomes the adoption by the Government in February 2003 of a National Action Plan aimed at implementing the conclusions of the Durban World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance. This plan is scheduled to run for five years and is aimed in particular at making the public more aware of the various forms of racism and their causes and encouraging the integration of foreign nationals in Liechtenstein. The Advisory Committee also welcomes the setting up, in July 2003, of a Commission for the Protection against Violence to observe and document acts of violence linked to right-wing extremism and identify dangerous developments in this field.

b) Outstanding issues

The Advisory Committee notes that ECRI's second report on Liechtenstein highlights the many significant steps taken by the authorities to combat racism and intolerance, while drawing attention to the particularly exposed position of some vulnerable groups such as persons – particularly women – of immigrant origin and Muslims, and the lack of a comprehensive integration strategy. The concluding observations of CERD also contain relevant recommendations in this respect.

Recommendations

The authorities should pay all the requisite attention to the full implementation of the National Action Plan and attempt to remedy the shortcomings identified both by ECRI in its second report and by CERD in its Concluding Observations, including as concerns law enforcement officers training. It is also important that the authorities regularly assess the impact of the measures taken. As information and statistical data on the extent of discrimination in Liechtenstein are still incomplete, the authorities should make a special effort to collect data in such key areas as access to employment, education and social services.

21. Lithuania

Opinion adopted on 27 February 2008

Anti-discrimination legislation*Findings of the first cycle*

In its first Opinion, the Advisory Committee encouraged the authorities to adopt legislative provisions against discrimination to cover various societal settings. It also expressed the hope that the mandate of the Ombudsman institutions be extended to cover discrimination and issues connected with the protection of national minorities.

Present situation

a) Positive developments

The Advisory Committee welcomes the adoption of the Law on Equal Treatment (in force as from 1 January 2005) and the Labour Code (in force as from 1 January 2003), which provide a legal basis for the protection against discrimination of persons belonging to a national minority, including in the field of employment.

The Advisory Committee strongly welcomes the broadening of the mandate of the Equal Opportunities Ombudsperson to include grounds of discrimination other than gender. The gradual increase in the number of applications relating to ethnic discrimination submitted to the Office of the Equal Opportunities Ombudsperson, since the extension of its mandate, demonstrates *inter alia* the enhanced awareness of the existence of this institution. The Advisory Committee welcomes the fact that a staff member of the Office has been assigned to deal specifically with this type of complaint.

b) Outstanding issues

While the State Report indicates that the Law on Equal Treatment transposed the European Council Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 into domestic legislation, it appears that the transposition of the 2000/43/EC Directive has not been fully completed.

The Law on Equal Treatment provides for exceptions to the prohibition of direct discrimination. Its Article 4(3) states that direct discrimination occurs when a person is subject to less favourable conditions due to age, sexual orientation, disability, race or ethnic origin, religion or beliefs with some exceptions and in particular the notable one of the requirement to have command of the State language. The Advisory Committee is deeply concerned that, if this exception is applied in a manner that does not take into account specific circumstances of a

particular case, it could have a discriminatory effect on persons belonging to national minorities. The Advisory Committee calls upon the authorities to ensure that this broadly phrased exception is not applied in such a way that it introduces disproportionate obstacles for employment and other opportunities of persons belonging to national minorities. In addition, it is important to ensure that persons belonging to national minorities are provided with appropriate opportunities to acquire sufficient command of Lithuanian (see also articles 14 and 15 below).

Recommendation

The Lithuanian authorities should ensure full and proper implementation of the Law on Equal Treatment in practice. The Advisory Committee urges the relevant authorities to ensure that the way in which the exception from the protection against discrimination relating to the command of the State language is applied, does not have a discriminatory effect on persons belonging to national minorities.

Legislation on citizenship

Findings of the first cycle

In its first Opinion, the Advisory Committee found problematic certain provisions of the law on citizenship, in force since 1 January 2003. The Advisory Committee drew attention *inter alia* to the potential discriminatory effect against persons belonging to national minorities of certain provisions of this law. The authorities were encouraged to examine the provisions concerned and to take the necessary steps to remedy this situation.

Present situation

a) Positive developments

The Advisory Committee is pleased to note that the provisions that it had considered potentially discriminatory against minorities (Article 18.2.2 of the law on citizenship) had, with other provisions of the aforementioned law, been the subject of an examination of their constitutionality, and that a decision was issued by the Constitutional Court on 13 November 2006. In accordance with this article, only persons of Lithuanian descent and who considered themselves Lithuanian could retain Lithuanian citizenship when they obtained the citizenship of another country. In pursuance of the Constitutional Court's decision, the provisions relating to dual citizenship, like a number of other provisions of this law, were ruled contrary to the Constitution and declared null and void. This decision also covers the provisions specifying the conditions for the retention of Lithuanian citizenship in the event that citizenship of another country is obtained, the discriminatory potential of which had been pointed out by the Advisory Committee.

b) Outstanding issues

According to information obtained by the Advisory Committee, the legal and political debate is continuing about the concept of Lithuanian citizenship, as well as about the most appropriate means of implementing the Constitutional Court's decision. It is not clear at this stage whether this process will lead to amendments to the citizenship law or to the adoption of a new law on citizenship. The Advisory Committee regrets the delay in following-up on the Constitutional Court's decision, and calls upon the authorities to ensure that, pending the conclusions of the said discussions, this decision is strictly complied with in practice, to ensure that no discriminatory treatment is applied to persons belonging to minorities.

Recommendation

The Advisory Committee calls upon the authorities to follow up, without further delay, on the above-mentioned decision of the Constitutional Court and to ensure that any new legislative provisions on citizenship and the corresponding practice will fully respect the right of persons belonging to national minorities to equality before the law and the non discrimination principle. National minorities should be duly consulted during the discussions to which the aforementioned decision of the Constitutional Court has given rise.

Data collection

Current situation

According to the State Report, employment data on the situation of persons belonging to national minorities have ceased to be collected since 2002. The Advisory Committee is of the opinion that the lack of reliable statistics, disaggregated by age, sex and geographical distribution, on the employment situation of persons belonging to national minorities hinders the possibility of drawing-up appropriate policies and measures to address structural problems in this field. It considers that collecting such statistical data is indispensable to design well-targeted and sustainable measures, which meet the needs of the persons belonging to national minorities.

Recommendation

The Advisory Committee encourages the Lithuanian authorities to collect data on the situation of persons belonging to national minorities in all relevant spheres, including in employment. Particular attention should be paid in this context to the numerically smaller minorities and to the gender dimension. At the same time, it is essential to ensure that the collection, processing and dissemination of this data respect the safeguards contained in the Council of Europe Committee of Ministers' Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes which includes key European standards and principles in this field.

22. Moldova

Opinion adopted on 9 December 2004

Developments in combating discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that official information on cases of discrimination on grounds of ethnicity was very limited and invited the authorities to improve the means of assessing the situation in this respect. The Parliamentary Advocates were encouraged to give more specific attention in their activities to issues connected with the protection of national minorities.

Present situation

a) Positive developments

The number of cases of discrimination brought to the attention of the Advisory Committee by persons belonging to national minorities remains limited. The Advisory Committee also notes that the problems of persons belonging to national minorities continue to account for only a very small number of the cases dealt with by the Parliamentary Advocates.

b) Outstanding issues

Like ECRI in its Second Report on Moldova, the Advisory Committee notes that the authorities still do not have sufficient data on the situation of persons belonging to national minorities in a number of areas of economic and social life. It notes in this context that, according to different sources, a significant proportion of the Roma population still faces difficulties and discrimination in various sectors (see in this connection "The situation of the Roma" below).

As to the Parliamentary Advocates, the Advisory Committee considers that, in order to make sure that the limited number of complaints addressed to them reflects the real situation, further efforts could be made to inform the population potentially concerned, in particular the Roma, of the opportunities this body provides for combating discrimination. The Advisory Committee takes note of the pending revision of the law governing the functioning of this body, aiming to make it more efficient, and considers that this could also be beneficial for persons belonging to national minorities.

In addition, the Advisory Committee notes that shortcomings are reported with regard to the conditions in which NGOs promoting human rights and fighting against discrimination work in Moldova.

Recommendations

The authorities should step up their efforts to find ways of obtaining a more complete picture of the implementation of the principles of non-discrimination and full and effective equality with respect to persons belonging to national minorities.

The authorities are encouraged to pursue their plans aiming to improve the legal framework and practical conditions for the activities of the Parliamentary Advocates. The latter are encouraged to be more active in informing the population of the mechanisms available to ensure protection from discrimination, including the possibility for non-governmental organisations to represent victims of discrimination before the Parliamentary Advocates. It is also important to ensure that appropriate attention is paid to ethnic grounds whenever they appear in a case.

More generally, it is important for the protection of national minorities to create in Moldova all the conditions enabling NGOs to freely pursue their activities and to support them in this.

The situation of the Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the authorities to intensify their efforts to find appropriate solutions to the serious social and economic difficulties, social exclusion and discrimination suffered by a significant number of Roma.

Present situation

a) Positive developments

In recent years, the authorities have introduced measures in various sectors in order to improve the situation of the Roma. As mentioned in the State Report, direct support, including financial, has been given to Roma in education, health, housing and other relevant areas.

b) Outstanding issues

Despite the measures mentioned, the implementation of the 2001 Governmental Programme for Roma Integration has not resulted yet in tangible improvement of the situation. A significant proportion of the Roma population of Moldova continues to face serious problems in virtually all key areas of life. In some rural areas they are still almost completely isolated in their villages, which are a long way from other localities and economic centres and in which living conditions continue to be particularly difficult – lacking basic sanitation, heating, running water and electricity. In this context, a high rate of unemployment is reported among the Roma – who have difficulty finding any source of income –, housing and health problems, difficulty accessing social services, no or very limited help from local authorities. In the educational field, it is noted *inter alia* that Roma children are isolated due to the geographic distance of their villages. There are high rates of illiteracy and absenteeism and virtually no access to education of or in the mother tongue. Similar difficulties are reported with respect to access to the courts and participation in public life (see also the comments under Articles 5, 6, 12, 14 and 15, below).

Although the whole population of Moldova has been suffering as a result of the serious economic difficulties of the country, the Roma suffer in addition social exclusion and marginalisation. They are the victims of prejudices and stereotypes, often disseminated by the media. Discriminatory practices against them, including, in some cases, on the part of members of the law-enforcement bodies, are reported in most areas (see also the comments under Article 6 below).

With the backing of the Council of Europe, there have recently been a number of consultations with representatives of the Roma on the possible adoption of a comprehensive strategy to supplement and develop the above-mentioned programme. In this context, a negotiating group composed of representatives of various Roma organisations was set up to be the Government's main partner in this process and to put forward concrete proposals in the name of the Roma. Although some governmental bodies have shown themselves to be open to this process, the drafting of the strategy at present seems to be blocked. The authorities seem to prefer the development of more specific measures, in pursuit of the Governmental Programme of 2001, than to the drawing up of the strategy mentioned above.

Recommendation

More determined efforts are needed, at both central and local levels, to achieve tangible improvements in the situation of the Roma. In particular, the improvement of their socio-economic situation is essential. The co-operation developed with the Council of Europe in this field should continue.

23. Montenegro

Opinion adopted on 19 June 2013

Article 4 of the Framework Convention

Legal and institutional framework for combating discrimination

Findings of the first cycle

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

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

Present situation

a) Positive developments

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

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

breached. The law provides two possible remedies to victims of discrimination, through courts and by way of applying to the Protector of Human Rights.

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

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

b) Outstanding issues

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

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

Recommendations

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

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

Role of the Protector of Human Rights

Findings of the first cycle

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

Present situation

a) Positive developments

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

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

b) Outstanding issues

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

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

Recommendation

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

The situation of the Roma and Egyptians

Findings of the first cycle

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

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

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

Present situation

a) Positive developments

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

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

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

b) Outstanding issues

Whilst welcoming the efforts made by the government over the past few years to seek solutions to the continuing marginalisation of Roma and Egyptians, the Advisory Committee is still deeply concerned about the continued existence of the Konik Camp,

where over 2 000 IDPs, mainly Roma from Kosovo*, have been living for over a decade in most deplorable conditions, without electricity, running water and sanitation facilities. That situation suggests insufficient will on the part of the authorities to resolve the issue. It is particularly disturbing that the authorities tolerate the existence of a ramshackle camp located in the immediate vicinity of the capital, on the site of a garbage dump, away from other residential areas and communities.

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

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

Recommendations

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

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

24. Netherlands

Opinion adopted on 20 June 2013

Article 4 of the Framework Convention

Anti-discrimination legislative and institutional framework

Findings of the first cycle

In its first Opinion, the Advisory Committee invited the authorities to pursue their efforts to combat discrimination, including by ensuring that adequate funds were made available for the various anti-discrimination bodies set up to function effectively.

Present situation

a) Positive developments

The Advisory Committee notes with satisfaction that the Netherlands has continued to develop its legal and institutional framework to combat discrimination. The principle of equality is guaranteed in the Dutch Constitution and in the 2004 Equal Treatment Act. The Advisory Committee welcomes the creation of the Netherlands Institute for Human Rights (hereinafter the NIHR) in October 2012, which incorporated the Equal Treatment Commission (ETC). This independent body, funded by the State, is responsible for

disseminating within society information on discrimination, conducting investigations, providing advice and guidance to potential victims of discrimination, and making recommendations to the Government on ways of countering discrimination. The National Ombudsman also continues to play an active role in the fight against discrimination.

The Advisory Committee further welcomes the development of a local system of monitoring and reporting of discrimination following the entry into force of the Municipal Anti-discrimination Services Act. It notes with satisfaction that each municipality has subsequently established an anti-discrimination bureau whose role is to provide assistance on discrimination and register complaints, as well as advise on policy and provide information to the general public. These Bureaus can also refer cases of alleged discrimination to the NIHR.

Furthermore, the Advisory Committee notes with satisfaction that the authorities have decided to tackle the problem of intolerance on the Internet, by concluding in 2013 a partnership agreement with the foundation “*Stichting M*” (an independent organisation for the anonymous reporting of crime) to record and handle complaints about discrimination on the Internet. It also notes that “*Magenta*”, a foundation that aims to counter racist attitudes on and through the Internet, continues to play an important role to combat discrimination. It considers that these good practices are essential to combat racism on the Internet and need to be supported to continue to function effectively.

b) Outstanding issues

Reports which have reached the Advisory Committee indicate that few cases of discrimination have been brought to the attention of the former Equal Treatment Commission or the Office of the Ombudsman by persons belonging to minority groups. According to some interlocutors, even if these persons face discrimination in their daily life, they are reluctant to initiate proceedings before official bodies because of their lack of confidence in them. This is particularly the case where persons belonging to Roma and Sinti communities are concerned. The Advisory Committee considers that measures must be taken to increase awareness of and trust in legal remedies available and institutions to combat discrimination.

The Advisory Committee notes with concern that these examples seem to indicate that those most exposed to discrimination do not make use of the remedies available to assert their rights. Despite recent awareness-raising campaigns carried out on the various forms of reporting discrimination, the Advisory Committee is of the opinion that more resolute measures are needed to ensure that the work of the anti-discrimination bodies, in particular the opportunities provided by the local anti-discrimination bureaus (ADV's), is well known by society at large and especially by the groups most at risk of being victims of discrimination.

Recommendation

The Advisory Committee calls on the authorities to provide better access to and raise public awareness of the remedies available in cases of discrimination and the role of the various anti-discrimination bodies among all ethnic groups and among the population as a whole, and to continue to support these bodies. The Advisory Committee also strongly encourages the authorities to pay particular attention to vulnerable persons most at risk of discrimination so as to enable them to be fully informed about their rights and the remedies available.

25. Norway*Opinion adopted on 5 October 2006***Legal and institutional framework for combating discrimination***Findings of the first cycle*

In its first Opinion on Norway, the Advisory Committee noted that legal safeguards against discrimination were limited in scope and recommended that the authorities give priority to passing a law ensuring protection against discrimination and amending other relevant laws. The Advisory Committee also called on the Government to set up a special supervisory body to ensure compliance with the proposed legislation against ethnic discrimination.

*Present situation***a) Positive developments**

The Advisory Committee takes note with satisfaction of the measures Norway has taken to strengthen its legislation and institutions for combating discrimination. The law banning discrimination on grounds of ethnic origin, national origin, religion, belief, descent, colour and language (the Anti-Discrimination Act), which came into force on 1 January 2006, covers all areas of society except family life and personal relations. Statutory provisions against discrimination in the fields of employment and housing have also been strengthened, as have the criminal law provisions against the expression of racial hatred and discrimination. Amendments to the Criminal Code (Article 135 a), which came into force on 1 January 2006, extend the scope of these provisions and introduce stiffer penalties for their violation.

On the institutional level, one can note the establishment, in early 2006, of the Equality and Anti-Discrimination “Ombud” (hereinafter referred to as the Ombudsperson), as a result of the merger of existing anti-discrimination institutions - the Ombudsperson for Equality between Men and Women, the Centre for Equality between Men and Women and the Centre for Combating Ethnic Discrimination (SMED). Under the law, the Ombudsperson plays an active part in promoting equality and combating discrimination, provides guidance to victims of discrimination and strives to influence attitudes and behaviour and enhance respect for diversity in the various areas of society. Furthermore, the Ombudsperson is entitled to examine complaints of discrimination, to express a statement as to whether or not the Anti-Discrimination Act has been infringed, and to issue recommendations to the competent bodies.

Affected persons are also entitled to appeal to the Equality and Anti-Discrimination Tribunal, another new institution introduced by the Law on the Equality and Anti-Discrimination Ombudsperson, when an agreement cannot be reached after the case has been examined by the Ombudsperson, or to contest the latter’s conclusion. By means of an administrative decision, the Tribunal may order measures to end the discriminatory practice and issue an injunction to put a stop to the circumstances that led to the discrimination.

The Advisory Committee welcomes the authorities’ decision to include national minorities in the scope of the measures provided for in the National Action Plan to Combat Racism and Discrimination for the period 2002 to 2006. The Plan reports on the difficulties encountered by the groups concerned - particularly in such areas as access to the labour market, discrimination at work and on the property market and, in certain cases, discrimination perpetrated by members of the police force or the judiciary – and includes government measures to remedy the situation. A monitoring system has been set up and its conclusions are expected before the end of 2006.

The Advisory Committee notes that a new Social Inclusion Plan is also on the drawing board and hopes that aspects connected with protection against discrimination will be included.

b) Outstanding issues

The Advisory Committee takes note of the concern expressed by various people it met with during its visit to Norway about the fact that the Ombudsperson’s terms of reference do not include providing certain types of legal aid to victims of discrimination, that were previously

provided by the former Centre for Combating Ethnic Discrimination. Concern was also expressed about the resources allocated to the Ombudsperson, which some consider insufficient if this institution is to perform adequately the duties for which it was set up.

Certain representatives of civil society also expressed some concern about the system of monitoring the implementation of the Action Plan. They were concerned in particular about the transparency of the monitoring exercise and of its conclusions and said they wanted the monitoring committee to include among its members representatives of all the parties concerned, including national minorities.

The Advisory Committee also noted that representatives of the national minorities were not yet very familiar with the new legal and institutional framework for protection against discrimination, and that they were eager for more information on the subject.

Recommendations

The authorities should provide the Ombudsperson with all the resources needed to perform the duties of the institution effectively. In addition, in the context of the implementation of the Anti-Discrimination Act, it is necessary to decide, in consultation with persons belonging to national minorities and non-governmental organisations, on the best arrangements for providing the victims of discrimination with the advice and help they need. Those concerned will thus be able to find out about, and make appropriate use of, the means of appeal available and obtain compensation from the competent administrative bodies or the courts.

Additional measures are needed to provide information about, and raise awareness of, the new legal and institutional framework for protection against discrimination to persons potentially concerned, the relevant public at large and the public and private bodies. The conclusions of the National Action Plan for Combating Racism and Discrimination should be disseminated and submitted for public debate, and the new Social Inclusion Plan should also reflect these conclusions.

Full and effective equality

Findings of the first cycle

In its first Opinion on Norway, the Advisory Committee noted that persons belonging to national minorities continued to be discriminated against in certain fields and encouraged the authorities to continue their efforts to combat this phenomenon and devote appropriate financial resources to doing so. In particular, the authorities were called upon to give priority to addressing the socio-economic differences between the majority and the Romani/Tatars and Roma populations and, in particular, the situation of Romani/Tatars and Roma women.

Present situation

a) Positive developments

As indicated in the State Report, the ministries concerned and the municipality of Oslo have launched a number of initiatives in order to eliminate the existing differences between the Roma and Romani/Tatars and the rest of the population in terms of socio-economic conditions. These initiatives are designed mainly to improve the situation of these persons in areas such as employment, including as regards the maintenance of their traditional occupations, education and, more generally, their standard of life. While noting that much remains to be done in order to find effective responses to the challenges mentioned, the Advisory Committee takes note of the authorities' manifest will to identify the most appropriate solutions, in consultation with the persons concerned.

b) Outstanding issues

The Advisory Committee is concerned by the difficult socio-economic situation faced by the Roma. It notes in particular their efforts to reconcile the educational needs of their children, which represent a priority for them, and the maintenance of their nomadic tradition. Despite

their nomadic tradition, the Roma wish to have fixed accommodation so that their children have easier access to education. The absence of fixed accommodation also means that it is difficult for them to obtain access to health care and welfare benefits. It is, however, hard for them to obtain housing because of the high prices and the contractual conditions offered to them. At the same time, they continue to face problems in access to encampment areas and, more generally, in preserving their nomadic tradition. The situation of Roma women continues to be particularly difficult, especially as far as employment is concerned.

The Romani/Tatars also expressed their discontent with problems in obtaining access to encampment areas during their seasonal travelling and with the many instances in which they were driven out of such areas. They also reported discrimination in employment and difficulties in education and in their efforts to preserve their traditional occupations (see also the comments under Article 5 below).

The above-mentioned problems with accommodation are especially disconcerting to Roma, given that they are a serious obstacle to enrolling their children at school. The Advisory Committee is concerned that, despite government efforts and specific instructions to schools in this connection, it seems that a significant number of Roma children are currently not enrolled at school. The Advisory Committee finds this situation worrying and considers that more resolute measures are needed without further delay (see also the comments under Article 12 below).

Recommendation

The Advisory Committee encourages the authorities, in consultation with representatives of the Roma and Romani/Tatars, to step up their efforts to find suitable solutions to the specific problems encountered by these people in the housing, employment and education fields. In particular, further resources should be mobilised as a priority to solve the difficulties the children of Roma and Romani/Tatars face in education and the authorities should pay increased attention to monitoring the integration of these children in schools. The situation of women belonging to these groups also requires specific measures of support by the authorities, given the difficulties faced by them in different sectors, notably in employment.

Data collection

Findings of the first cycle

In its first Opinion on Norway, the Advisory Committee, having observed that data on ethnic discrimination were not systematically gathered in Norway, encouraged the authorities to find new means of collecting data in this field.

Present situation

a) Positive developments

According to the authorities, initiatives are under consideration and contacts have already been established with representatives of minorities, in particular the Roma and Romani/Tatars, to find means of collecting reliable data on the situation of national minorities in different fields. These initiatives are, however, only in their infancy at the moment.

b) Outstanding issues

According to the authorities, the collection of ethnic data is not permitted under Norwegian law. The Advisory Committee emphasises how important it is, for the preparation, implementation and monitoring of public policies for the protection of minorities, to have information about the situation of the different groups, in terms of numbers and geographical distribution and in the different spheres of the economy, society and cultural and political life (employment, health, housing, education, etc). The Advisory Committee notes that, despite the initiatives reported by the Government, there has been no real progress with the collection of such information. It observes, for example, that the authorities do not seem at this stage to have a clear picture of the school attendance or otherwise of children of Roma and Romani/Tatars and are not yet in a

position to devise the most suitable means of addressing the difficulties reported in this connection (see also the comments in paragraphs 47 and 48 above).

The Advisory Committee notes that, even though some groups are still wary of the collection of such data, this is not the attitude of all the national minorities of Norway. For instance, the Kvens explicitly expressed the desire that statistical or other studies be made of their community, their numerical proportion within the Norwegian population and their situation in the various sectors, so that the authorities concerned and the public could find out more about them and so that they could enhance their status and express their needs.

Recommendation

The Advisory Committee calls on the authorities to pursue and develop with vigour the initiatives under way in order to obtain reliable data on the situation of persons belonging to the minorities in various sectors. This should be conducted in close co-operation with the minorities' representatives and with full regard for the safeguards, notably those related to the free, informed and unambiguous consent of the persons concerned, laid down in the Committee of Ministers Recommendation (97) 18 concerning the protection of personal data.

26. Poland

Opinion adopted on 20 March 2009

Legal and institutional protection against discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that Poland, having made some progress in adopting anti-discrimination legislation, needed to pursue efforts in this area to ensure that not only the legislative framework prohibiting discrimination in all areas of life is in place, but also that effective remedies are available to victims of discrimination.

Present situation

a) Positive developments

Article 6 of the Act on National and Ethnic Minorities and Regional Language prohibits discrimination resulting from affiliation with a national or ethnic minority. The Act obliges the public authorities to institute appropriate measures in order to support full and effective equality in the area of economic, social, political and cultural life and to protect those who are targets of discrimination, hostility or violence. Although the prohibition of discrimination contained in Article 6 refers to "national and ethnic minorities" as defined by the Act, the Advisory Committee considers that it is self-evident that persons not covered by the limited scope of this definition are covered by existing anti-discrimination laws. Article 37 of the Constitution of the Republic of Poland guarantees to everyone who is within the jurisdiction of the Polish State, the enjoyment of rights and freedoms enshrined in the Constitution. Article 32 of the Constitution prohibits discrimination for any reason whatsoever in political, social and economic life.

The Advisory Committee welcomes the transposition of the European Council Directive on Racial Equality (2000/43/EC) and European Council Directive on Employment Equality (2000/78/EC) into Polish domestic legislation. Notably, the amendments to the Labour Code of 24 August 2001 and 14 November 2003 brought the Polish labour law in line with the respective Equality Directives. The Act on the Promotion of Employment and Labour Market Institutions, adopted on 1 June 2004, also introduces the prohibition of discrimination against job-seekers *inter alia* on the basis of ethnic origin.

The Advisory Committee welcomes the establishment in March 2008, of the Bureau of the Government Plenipotentiary for Equal Treatment. The Ordinance establishing the Plenipotentiary obliges it to combat discrimination on the grounds of gender, race, ethnic origin, nationality, religion or belief, political opinion, age, sexual orientation, civil and family status.

The Plenipotentiary coordinates the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance.

The Advisory Committee is pleased to note the continued active role played by the Ombudsman in raising awareness of minorities' rights and in seeking solutions to outstanding problems. The Advisory Committee welcomes the interventions of the Ombudsman aimed at improving the harsh living conditions of Roma inhabitants in some settlements in the Podkarpackie region. It also welcomes his interventions on behalf of the Ukrainian minority who have sought, for over 18 years, restitution of the Ukrainian National Home in Przemyśl which had been confiscated by the communist regime in 1947 (see comments under Article 5 below). The Advisory Committee further notes the initiative of the Ombudsman to establish minority contact persons within his office in order to encourage the lodging of applications by persons belonging to national minorities.

b) Outstanding issues

The Advisory Committee notes that no court cases have been initiated thus far based on the provisions of the new anti-discrimination legislation. In this context, the Advisory Committee calls on the authorities to ensure that these provisions do not remain on paper only and that they are implemented in practice.

The State Report did not provide specific data, going beyond the information obtained in the census of 2002, other than that concerning the education of minorities. The Advisory Committee is of the opinion that the lack of reliable statistics, disaggregated by age, sex and geographical distribution, especially in the field of employment, leads to increased difficulties in elaborating targeted minority policies. It considers that collecting such statistical data in a way that conforms to international standards on data protection is indispensable to design well-targeted and sustainable measures, which meet the needs of persons belonging to national minorities. The Advisory Committee wishes to emphasise the importance of such data for the preparation, implementation and monitoring of public policies with regard to the protection of minorities and especially disadvantaged groups. Awareness-raising among national minorities of the necessity to collect such data for the elaboration of adequate policies is also desirable.

Recommendations

The Office of the Government Plenipotentiary for Equal Treatment should be given appropriate resources, including the financial means which would allow it to intensify monitoring of alleged cases of discrimination, hostility on ethnic and national grounds and racial or ethnic hatred.

The authorities should adopt measures aimed at collecting reliable socio-economic data, disaggregated by age, sex and geographical distribution, in particular in relation to employment, so as to be in a position to elaborate targeted minority policies in this field.

Implementation of the principles of equal treatment and non-discrimination in respect of the Roma

Findings of the first cycle

The Advisory Committee encouraged the authorities to make available the necessary resources for the implementation of the Programme for the Roma Community in Poland in full consultation with the Roma community and representatives of civil society.

The Advisory Committee also concluded that Roma are discriminated against in the fields of employment and medical care. It called on the authorities to combat discrimination by taking action as regards both the legislative framework and its implementation in practice.

Present situation

a) Positive developments

The Government continued to implement measures aimed at alleviating difficulties faced by the Roma community in housing conditions, employment, healthcare, safety, culture and education.

Building upon the generally positive experience gathered in implementing the Pilot Programme for the Roma Community in the Małopolskie Region in 2001-2003, Poland adopted a ten-year Programme for the Roma Community in 2003-2013.

This Programme, composed of projects in all pertinent areas of economic, social, political and cultural life, aims particularly at improving the living conditions and education opportunities of the Roma community (see related comments under Article 15 below).

The Advisory Committee is pleased to note the progress achieved in the education of Roma children. The introduction of Roma educational assistants, scholarships specifically earmarked for Roma students and the almost complete abolition of separate Roma classes has contributed significantly to a higher attendance, lower drop-out rate and higher results of Roma children (see related comments under Article 12 below).

b) Outstanding issues

Despite the progress achieved in some fields, in particular in the schooling of Roma children, the situation of Roma, in respect of health, employment and housing, is still a matter of serious concern. Efforts undertaken in the framework of the National Programme for the Roma Community to improve the living conditions, in particular the roads, water pipes and sewage facilities in some particularly disadvantaged settlements in the Małopolskie Region, have not yielded the anticipated results.

The Advisory Committee was deeply concerned to learn that, in the Maszkowice Primary School, Roma children attending one of the few remaining segregated Roma classes were required to use a separate entry to the building. In another instance a Roma educational assistant was not allowed access to the teachers' office. These incidents, while isolated and vigorously condemned by the authorities, are not compatible with the principles enshrined in Article 4 of the Framework Convention.

Recommendation

The authorities should tackle vigorously any discriminatory practices affecting Roma pupils and teachers, including through public awareness-raising campaigns and training programmes for persons concerned.

27. Portugal

Opinion adopted on 5 November 2009

Protection against discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that, despite the existence of a comprehensive legal framework to combat discrimination, the jurisprudence linked to discrimination cases was very limited and there was little awareness among the judiciary of discrimination-related issues. Moreover, it regretted the lack of effectiveness of the existing remedies.

Present situation

a) Positive developments

The Advisory Committee welcomes the measures taken by the authorities to raise awareness of society on discrimination, as part of the European Year on Equal Opportunities for All (2007), including at the level of schools. It underlines the importance, for anti-discrimination policies to be successful, of such programmes, which should be pursued continuously and in the long-term.

The Advisory Committee notes with interest the launching of a campaign “for preventive advocacy”, which aims at improving the availability of legal aid to victims of discrimination. It also welcomes the introduction of the possibility to make complaints on-line in cases of

discrimination, through the website of the Commission for Equality and Against Racial Discrimination (CEARD), as a way of improving the accessibility of existing remedies. Additionally, it notes with satisfaction that membership of the CEARD includes representatives of the Roma minority (see also remarks under Article 15 below).

The Advisory Committee notes with satisfaction that the Portuguese Ombudsman (*Provedor de Justiça*) regularly addresses cases related to racism and discrimination and has therefore continued to play an important role in fighting racial discrimination.

b) Outstanding issues

The Advisory Committee is concerned by persistent shortcomings with regard to remedies in cases of racial discrimination. Administrative complaints for racial discrimination can be submitted to the Office of the High Commissioner for Immigration and Intercultural Dialogue (ACIDI), which is in charge of ensuring the implementation of the principle of equal treatment. The CEARD, which is working under the auspices of the ACIDI, gives an independent opinion on the cases submitted. Complaints are not investigated by the ACIDI but by inspectorates placed under ministries, before a decision is taken by the ACIDI. Various sources indicated to the Advisory Committee that this system is not easily understandable by potential complainants. Moreover, the system of administrative investigation of complaints allegedly lacks effectiveness.

The Advisory Committee was informed that, in addition to its complexity for the public, procedures in case of discrimination before the ACIDI/CEARD are often protracted. In fact, the ACIDI has in recent years rendered only very few decisions and there is currently a backlog of around 300 pending cases. The Advisory Committee finds this situation regrettable. Moreover, it notes with concern that some sources question the effective independence of the ACIDI, which is placed directly under the responsibility of the Prime Minister.

Additionally, the anti-discrimination legislation and the provisions of the Criminal Code dealing with racially-motivated offences seem to be rarely applied by courts. The case-law on issues relating to racial discrimination is, thus, very limited, which does not contribute to raising the awareness of society on these issues. The Advisory Committee was also informed that victims of discrimination tend not to complain, which can be explained by insufficient information about the available remedies and, in some instances, also by a lack of confidence in the criminal justice system.

Recommendations

The Advisory Committee urges the Portuguese authorities to take steps to increase the effectiveness and accessibility of domestic remedies to respond to complaints of racial discrimination, as well as to ensure the effective independence of the complaints body itself. Resolute measures should, in particular, be taken to process the backlog of discrimination complaints which are pending before the ACIDI.

Efforts to raise awareness in society on racial discrimination and existing remedies should be pursued and expanded. Particular attention should be paid to raising awareness and training of law enforcement officials and the judiciary.

Measures to promote full and effective equality

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the Portuguese authorities interpreted the existing legislation on sensitive personal data collection as impeding the collection of ethnic data. It regretted the ensuing lack of reliable disaggregated data on the situation of persons belonging to minorities, which made it more difficult to develop suitable policies to promote equal opportunities and to prevent effectively racial discrimination.

The Advisory Committee also encouraged the authorities to integrate further and mainstream Roma issues in social policies, including those implemented as part of the National Action Plans against Poverty and Social Exclusion.

Present situation

a) Positive developments

The Advisory Committee is pleased to note that further steps have been taken to develop and implement positive measures in order to promote social inclusion of persons belonging to disadvantaged groups in society, including ethnic minorities, and in particular the Roma. Against this background, it finds particularly commendable that a set of measures were included in the National Action Plan against Poverty and Social Exclusion for 2008-2010 with a view to combating discrimination and inequalities facing many Roma. The Action Plan acknowledges the need to take specific, targeted measures to overcome the existing gap in terms of equal opportunities.

The Advisory Committee also notes with interest that a recent report of the Portuguese Parliament (see paragraph 29 above) discusses the need to step up efforts in the field of positive action, in order to better promote full and effective equality of the Roma, to combat more effectively discrimination against them and to improve public policies targeting them.

b) Outstanding issues

The Advisory Committee notes with concern that, according to various sources, many Roma continue to face discrimination in several areas of life, such as employment and housing (see more detailed remarks under Article 15 below) and education (see remarks in respect of Article 12 below).

The Advisory Committee deplores the persisting lack of reliable data on the situation of persons belonging to minorities, and in particular Roma, in areas such as employment, housing or education, despite the existence of a few sociological studies providing some data on persons belonging to the Roma minority. It also notes that the Ministry of Education has been collecting some data on the situation of Roma in the field of education, with a view to designing further specific measures. The Advisory Committee is, however, of the opinion that the information available is not sufficient to provide an accurate picture of the situation of Roma (see also remarks in respect of Article 15 below) and it understands that others in Portugal are advocating for comprehensive data collection on the situation of persons belonging to ethnic minorities, and in particular to the Roma community. It underlines that the current lack of data constitutes a serious obstacle to the elaboration and implementation of more effective positive measures and specific policies to promote equal opportunities. Furthermore, it makes it more difficult to demonstrate and combat existing racial discrimination.

The Advisory Committee wishes to recall that it is possible to collect socio-economic and other data concerning persons belonging to minorities using methods offering adequate personal data protection, such as sociological studies or surveys. Such studies should be based on voluntary self-identification of the persons concerned; the process should be carried out in a transparent manner and in consultation with representatives of the minorities concerned. They should fully respect existing international standards in the field of personal data protection.

Recommendations

The Advisory Committee encourages the authorities to develop further positive measures to promote full and effective equality for Roma, while ensuring that these measures are fully mainstreamed into social and other policies.

The Advisory Committee calls on the authorities to collect specific information on the social, economic and educational situation of Roma, with a view to improving the efficiency of policies targeting them, while fully respecting international standards in the field of personal data protection (see also remarks in respect of Article 15 below).

Combating discrimination against Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee noted with concern that, despite efforts made by the authorities to improve the situation of the Roma, they seemed to be particularly disadvantaged in areas such as housing, education and access to employment, in comparison with the majority population.

The Advisory Committee was particularly concerned by reports concerning attempts by local authorities to forcefully evict Roma from town centres, without providing them with adequate alternative accommodation.

Present situation

a) Positive developments

The Advisory Committee welcomes the measures taken by the authorities since the adoption of its first Opinion, including at local level, to improve the living conditions of the Roma in certain areas and their access to employment and education (see also remarks under Articles 12 and 15 below).

The Advisory Committee is pleased to note that some municipalities have promoted re-housing schemes aiming at integrating Roma within the municipality (see also remarks under Article 15 below).

b) Outstanding issues

Information provided to the Advisory Committee indicates that in some municipalities, such as Beja or Pombal, Roma settlements are surrounded by walls, often with only one entrance and exit route. The Advisory Committee is deeply concerned by these practices, which result in segregation of the Roma population. They also result in serious limitations to the freedom of movement of the persons living there. Therefore, it finds them incompatible with the principles of Article 4 of the Framework Convention.

The Advisory Committee is also informed of the situation of a number of Roma who, because they are not registered on population registers or electoral roles of municipalities, are prevented from staying longer than a few days in a municipality and are compelled to move from place to place. It appears that they often live in tents, in substandard conditions, they cannot access a number of social services and benefits and are sometimes facing mistreatment by the police when being expelled (see comments in respect of Article 6 below). Even though there is a lack of reliable information on the numbers of persons who find themselves in this situation, the Advisory Committee finds that this situation is of deep concern and is of the opinion that it must be thoroughly and swiftly investigated and urgently remedied since it is incompatible with the principles of the Framework Convention.

The Advisory Committee is informed of alleged cases in which Roma are requested to pay a higher price to obtain various goods and of cases of denial of services, including of access to entertainment places such as bars or restaurants. Roma representatives also complain that the police and local authorities are in some places tolerating such discriminatory practices and refraining from taking any action to put an end to them.

Recommendations

The Advisory Committee urges the Portuguese authorities to take, as a matter of priority, vigorous measures to put an end to the practice, carried out by some municipalities, of separating Roma from the majority population by means of walls or fences. Adequate measures should also be designed to prevent such practices from reoccurring in the future. It is important to remind local authorities of their responsibilities in the field of respect for human rights.

The Advisory Committee urges the authorities to investigate without further delay the situation of those Roma who are compelled to move constantly from place to place, with a view to

identifying measures to solve the problems facing these persons. Measures should be taken to enable them to register in municipalities and have access to stable residency and to enable them to have equal access to rights and services. Particular attention should be paid to improving their housing conditions. The authorities should also ensure that the persons concerned have the possibility to participate effectively in the search for solutions.

The authorities should thoroughly investigate any complaint of alleged discrimination of Roma in the provision of goods and services. If discriminatory acts are established, the perpetrators should be adequately sanctioned. The authorities should also ensure that, in such instances, Roma receive adequate protection by law enforcement agencies and local authorities.

28. Romania

Opinion adopted on 24 November 2005

Prevention and protection against discrimination

Findings of the first cycle

In its first Opinion on Romania, the Advisory Committee urged the authorities to implement promptly and fully the legal provisions for ensuring protection against discrimination and to take all necessary measures to ensure that the National Council for the Prevention of Discrimination was able to operate appropriately and effectively.

Current situation

a) Positive developments

The Advisory Committee welcomes the legislative measures taken by Romania to strengthen protection against discrimination. It notes in particular the passing of Law No. 48/2002, ratifying Government Order No. 137/2000 on Preventing and Punishing all Forms of Discrimination, and bringing together the legal provisions governing anti-discrimination measures in Romania. The Code of Conduct for Civil Servants, adopted by Law No. 7/2004, is also an important addition to the regulations introduced in Romania to ensure compliance with the principles of equality and non-discrimination.

The Advisory Committee also notes that the Romanian Constitution, revised in 2003, introduces, among other new provisions relating to the protection of minorities, a prohibition of nationalisation or any expropriation on the grounds of social, ethnic, religious, political or any other discriminatory criterion in respect of the owners (Article 44 (4)).

At the institutional level, the Advisory Committee notes the setting up of the National Council for the Fight against Discrimination as a specialist body overseeing the implementation of the principles of equal treatment and equal opportunities and monitoring the application of anti-discrimination legislation. Despite the limited material and human resources available, this Council has steadily developed its activities in terms of both information and awareness-raising and applying sanctions to those who have committed acts of discrimination. The Advisory Committee notes with satisfaction the increased determination and commitment shown by this Council to improve its working methods and conditions, to raise its profile and strengthen its credibility. The Advisory Committee also appreciates the efforts made to ensure that national minorities, including the Roma, are represented in its Steering Board.

Complaints of discrimination and decisions issued relate primarily to acts of discrimination against Roma, in particular with regard to access to public places, and discriminatory or racist articles or advertisements appearing in the press. The Advisory Committee also takes notes of the decisions and sanctions applied (in the form of fines) further to complaints of discrimination in access to housing or in education.

b) Outstanding issues

The Advisory Committee notes that numerous non-governmental sources have criticised the National Council for the Fight against Discrimination for its limited impact, the little authority it has vis-à-vis public institutions and its failure to deal in depth with discrimination-related problems. One of the main concerns expressed by these sources is related to the independence of this body. A new anti-discrimination law, currently prepared by the Government, is aimed at strengthening the independence of the National Council for the Fight against Discrimination, which will be placed under the responsibility of the Parliament.

More generally, the Advisory Committee notes that a very small number of cases of discrimination on ethnic grounds have been reported. While this may be due to the rare occurrence of such cases, it may also be due to the fact that anti-discrimination legislation is not often applied by those concerned, whether judges, lawyers, prosecutors or whoever, and that the general public is not sufficiently aware of this legislation. The Advisory Committee hopes that the legislative measures recently taken to encourage recruitment of persons belonging to national minorities in the judiciary will make it possible to increase awareness of minority related issues within the legal profession (see also related comments in paragraph 181 below).

Recommendation

The authorities should take all necessary measures to ensure that the National Council for the Fight against Discrimination can operate independently and effectively. To this end, particular attention should be paid to revising its statute and allocating appropriate human and financial resources. There is also a need for further information and awareness-raising measures relating to anti-discrimination legislation, targeting both the population at large and the public authorities.

Application of the principles of equality and non-discrimination with regard to the Roma*Findings of the first cycle*

In its first Opinion on Romania, the Advisory Committee called on the authorities to take more decisive steps to address the social and economic inequalities affecting the Roma population and to prevent and combat instances of discrimination which the Roma continued to suffer in various fields.

Current situation

a) Positive developments

In application of the Strategy to improve the situation of the Roma adopted by the Government in 2001, improving the lot of the Roma has been a priority for the Romanian authorities in recent years. At the institutional level, a joint implementing and monitoring committee, with the National Agency for Roma as its executive body, is responsible for planning, co-ordinating and monitoring the implementation of the various measures developed under this strategy. Throughout the country, county offices for Roma have been set up in prefectures and Roma experts have been recruited in municipal authorities.

As pointed out in the State Report, many projects and programmes have been set in motion at national and local level to help the Roma cope with the difficulties encountered in most walks of life and to narrow the gap between them and the rest of the population. The Advisory Committee notes with satisfaction that these measures, adopted in the majority of cases in co-operation with non-governmental organisations and with external financial support, are gradually beginning to show results in a variety of sectors – housing, employment, health and vocational training.

For example, school mediators and school inspectors for Roma have been appointed in the education sector, alongside forms of distance learning to train Roma teachers. As a result of these measures, an increasing number of Roma children are able to be taught the Roma language. They now have suitable textbooks and educational material.

In order to improve the health situation of the Roma, greater efforts have been exerted to raise the awareness of this community and to facilitate their access to health care, including via health mediators. These are posts for which almost 200 Roma women have been trained and recruited. In the employment field, a number of projects have been developed with non-governmental organisations to facilitate Roma access to the labour market (vocational training or re-training programmes, employment fairs for Roma, etc).

b) Outstanding issues

The implementation of the Strategy to improve the situation of the Roma, as well as the impact of this strategy, has been limited, although progress has been noted in the various sectors concerned. This state of affairs is often attributed to the limited state resources allocated for implementation of the strategy, both overall and in individual sectors, alongside insufficient co-ordination of those involved and the lack of appropriate monitoring. There has also been weak and ineffective participation by the Roma community in the various stages of drawing up and implementing the measures coming under the strategy.

Accordingly, the Roma continue to face serious problems in many areas, and to be victims of marginalisation and social exclusion. Despite the many measures taken to help them enter the labour market, unemployment remains particularly high among the Roma, and Roma women are particularly affected by this. Serious problems are also reported with regard to housing and living conditions, which continue to be extremely difficult for a large part of this population. In certain cases, the solutions opted for by the local authorities to deal with these difficulties - eviction measures followed by inappropriate rehousing solutions - only make matters worse for the people concerned. The Advisory Committee also notes that the Roma are exposed to additional difficulties in the context of the restitution of property under way in Romania (see also observations under Article 5 below).

In the health and social welfare fields, the Roma, which form the population group with the largest number of families living on social benefits, are particularly affected by the more general problem of implementation of current legislation. In education, despite significant progress, there are still many problems facing the Roma, and these has a negative impact on their access to the labour market and on their living conditions (see also observations under Articles 12 and 14 below).

It should also be noted that, even though now less frequent and despite sanctions imposed by the National Council for the Fight against Discrimination, discrimination against the Roma in different sectors continues to be reported, ranging from refusal to employ Roma to discriminatory practices of certain local authorities as regards restitution of land and access to social benefits.

The Advisory Committee notes with concern that, according to estimates by the authorities, around 50,000 Roma have no identity documents, a situation which seriously hampers their access to the majority of social and economic rights (social welfare, education, employment and housing). Major difficulties will also emerge, as a result of this lack of documents, for those Roma whose housing was affected by the floods of summer 2005. However, efforts are under way to help the persons concerned obtain these documents and the National Population Inspectorate is in contact with Roma organisations in order jointly to identify the most appropriate solutions.

Recommendations

The authorities should take more decisive measures, in consultation with the Roma, to overcome the shortcomings noted in the sectors identified as priority areas in the evaluation of the 2001 Governmental Strategy for the Roma. Increased attention should be paid to the level of resources allocated in this context.

The authorities are also called upon to ensure ongoing monitoring of the situation regarding discriminatory attitudes and practices vis-à-vis the Roma. At the same time, information and

awareness-raising activities in this field, targeting the Roma, the rest of the population and the public authorities concerned, should be stepped up.

29. Russian Federation

Opinion adopted on 11 May 2006

Prevention and protection against discrimination

Findings of the first cycle

In its first Opinion on the Russian Federation, the Advisory Committee considered that detailed and comprehensive civil/administrative law provisions pertaining to discrimination on racial or ethnic grounds were needed in a number of fields, such as housing and education, in order to protect individuals from discrimination by both public authorities and private entities.

The Committee also pointed out that more data on discrimination needed to be collected, without which it would be difficult to implement the anti-discrimination articles which exist in certain laws, let alone evaluate their effectiveness.

Present situation

a) Positive developments

The Advisory Committee welcomes the inclusion of equality guarantees in the 2004 Federal Law on the System of State Civil Service. Under Article 70 paragraph 15 of this law, civil servants who believe they have been subject to discrimination have the right to take their cases to court.

b) Outstanding issues

Efforts have still not been made to develop comprehensive civil and/or administrative law provisions pertaining to discrimination in fields other than employment.

In spite of credible reports received by the Advisory Committee concerning discrimination in various parts of the Russian Federation, few complaints about discrimination seem to have been registered in courts or taken to other official channels (ombudspersons, labour inspectors, etc). For instance, the Advisory Committee is not aware of any cases where the detailed anti-discrimination provisions contained in Article 3 of the 2001 Labour Code have been used.

One factor contributing to this is the absence of statistical data broken down by ethnicity concerning employment and access to different social services, without which it is very difficult to demonstrate discrimination. In this context, the Advisory Committee regrets the fact that there is still no system for collecting data related to discrimination on racial or ethnic grounds. While appreciating the commitment to fighting discrimination expressed by the federal Ombudsperson and by the regional ombudspersons who met with the Advisory Committee, the Committee notes that the collection of discrimination-related data is not given priority in their work. The Advisory Committee notes in this connection that, in its second report on the Russian Federation, the European Commission against Racism and Intolerance called on the Russian Federation to establish an independent body specialising in the field of racism and racial discrimination. The Advisory Committee believes that the competences of such a body could include the collection of discrimination-related data.

The low numbers of discrimination cases registered in courts also suggest that further measures are needed to ensure that individuals are informed of their rights and that they have confidence in the relevant authorities to seek remedy when they consider that their rights have been violated.

Moreover, with the exception of the Labour Code, the anti-discrimination provisions found in other civil and administrative norms are not sufficiently detailed as regards the nature of the offence and the remedies available in order to be effectively applied by courts. For instance, none of these provisions include an explicit definition of the term 'discrimination'.

Recommendations

The Advisory Committee again encourages the authorities to develop comprehensive legislation which provides effective remedies against discrimination both by public authorities and private entities in important societal settings, such as housing and education.

The Advisory Committee considers that definitions of discrimination which include *inter alia* direct and indirect forms of discrimination should be incorporated in the anti-discrimination provisions which exist in certain civil and administrative norms as this would encourage individuals to question discriminatory policies and would encourage state authorities to act in these areas.

The Advisory Committee urges the authorities to consider the creation of an independent body specialised in combating discrimination which could monitor the implementation of existing anti-discrimination measures and engage in awareness-raising activities. This body could also be responsible for obtaining up-to-date statistical data concerning the situation of persons belonging to national minorities in employment and other societal settings.

Discrimination in the residency registration system

Findings of the first cycle

In its first Opinion, the Advisory Committee expressed concern about problems affecting the residency registration system. Noting that these problems disproportionately affected persons belonging to national minorities, the Committee called on the authorities to step up efforts to make the system of residency registration compatible with applicable human rights standards.

The Advisory Committee noted that the problems relating to registration were particularly acute in situations where the citizenship status of the persons concerned was not, in the view of the authorities, defined. The Committee therefore called on the authorities to endorse efforts to grant citizenship to stateless persons residing in the Russian Federation.

Present situation

a) Positive developments

Federal executive and legislative organs have begun taking steps to address the problematic aspects of the residency registration system in certain subjects of the federation, particularly the existence of illegal restrictions on registration and illegal rules establishing registration as a precondition to access other rights. By introducing these provisions, many regional and local authorities throughout the federation have been able to use the residency registration system, which is supposed to be notificatory in nature, to control migration into their territories, a system which in some cases has led to discrimination. The Advisory Committee also notes that aspects of the residency registration system raise concern from the point of view of Article 27 of the Constitution of the Russian Federation, which guarantees freedom of movement and choice of place of residence. In 2003, in an attempt to address these problems, the Federal Ministry of Education sent a memorandum to all subjects of the federation insisting that schools should under no circumstances make registration a condition for admitting students (see also comments under Article 12 below). Federal authorities are also beginning to react against illegal restrictions on registration in certain subjects of the federation *inter alia* by drafting a new bill on migration that will establish clearer federal procedures for residency registration.

Efforts have also been made to address the large numbers of former Soviet citizens living in the Russian Federation without any legal status. According to some estimates, these people number in the hundreds of thousands and it is generally they who encounter severe difficulties obtaining registration, in spite of the fact that many have lived in the Russian Federation for over 15 years. This concerns in particular many Meskhetian Turks who have lived in Krasnodar *krai* since the late 1980s, and who were denied automatic citizenship of the Russian Federation when this possibility was available between 1991 and 1992. In August 2003, amendments were made to the 2002 Law on Citizenship of the Russian Federation, reintroducing a simplified procedure for

former Soviet citizens to apply for citizenship. According to government figures, these amendments have contributed to an increase in the number of persons acquiring citizenship. In 2004, over 270,000 people acquired citizenship of the Russian Federation (including 193,000 under the simplified procedure).

b) Outstanding issues

The Advisory Committee is concerned by the fact that many of the registration and citizenship procedures entail considerable disadvantages affecting a great number of persons belonging to national minorities. For instance, the simplified procedure for obtaining citizenship has not helped to resolve the problems of those lacking residency registration. Under the facilitated procedure for acquiring citizenship, former Soviet citizens can obtain citizenship without submitting a residence permit, without demonstrating five years of residence, without taking a language exam and without demonstrating a legal means of subsistence. However, the procedure still requires the presence of a residency registration stamp in the former Soviet passport of an applicant, something which many persons belonging to minorities were denied.

Moreover, the Advisory Committee is concerned that the entry into force on 1 November 2002 of the Federal Law on the Legal Status of Foreign Citizens reduced the possibilities for former Soviet citizens living in the Russian Federation without any legal status to acquire residency registration. Whereas previously former Soviet citizens came under the same registration regime as Russian citizens (stamps registering their place of residence were inserted in their Soviet passports), since November 2002 they have been treated the same way as any foreigner or stateless person, that is, in order to register their place of stay, they must first receive a migration card (valid for three months) with which they can apply for a temporary residence permit on the basis of annual quotas established by the federal Government. Should the latter process take longer than three months the affected persons may face deportation.

The Advisory Committee is aware that, according to Article 37 paragraph 1 of the 2002 Federal Law on the Legal Status of Foreign Citizens, former Soviet citizens who arrived in the Russian Federation before 1 November 2002, when the law took effect, were given the opportunity to obtain migration cards upon request within two months of the date when the law came into force. The Advisory Committee also notes that in some regions, including Krasnodar *krai*, with the support of the local Ombudsperson, this deadline was extended to October 2003 in an attempt to regularise the situation of persons belonging to certain national minorities, including Meskhetian Turks. Nevertheless, upon obtaining migration cards, these persons were treated in the same way as any foreigner or stateless person, that is, they were given only three months to apply for temporary residence permits on the basis of annual quotas or face the threat of deportation. According to information received by the Advisory Committee, many Meskhetian Turks who had been living in Krasnodar *krai* prior to 1989 considered this unacceptable and thus failed to make use of the procedure.

The Advisory Committee also notes that the problems affecting the registration system are, in many cases, related to discriminatory application of legislation rather than to problems with the legislation itself (see also comments under Article 16). The Committee has learnt, for example, that following the entry into force of the 2002 Law on the Legal Status of Foreign Citizens, many Meskhetian Turks, Khemshils, Yezhids and Batumi Kurds living in Krasnodar *krai*, were reportedly denied migration cards and thus permission to obtain residence permits and registration by the territorial branches of the relevant federal institutions in spite of meeting the necessary requirements.

Moreover, persons deprived of registration still face *de facto* problems ensuring implementation of their civil, social and economic rights. People may be denied access to public services, such as free medical services, education, pensions, child and unemployment allowances, unless they hold registration at their place of residence, and employers are required to hire only individuals holding registration. The Advisory Committee has received information that in Krasnodar *krai*, persons lacking registration have even been denied access to courts, thereby depriving them of the right to appeal against decisions deemed discriminatory by the applicant. Finally, the

Advisory Committee is aware that the registration process has led to incidents of corruption among the police who demand bribes in exchange for processing registration applications and during spot checks for registration documentation, with Roma and persons belonging to minorities originating in the Caucasus and Central Asia targeted in particular (see below paragraph 73).

Recommendations

The Advisory Committee urges the authorities to ensure that no undue obstacles are placed in the way of former Soviet citizens attempting to regularise their situation and acquire Russian citizenship, especially those who were living in the Russian Federation prior to 1 November 2002 when the Federal Law on the Legal Status of Foreigners came into force.

The Advisory Committee calls on the authorities to ensure that regional and local registration regimes comply with federal legislation, both in terms of removing remaining restrictions to registration, and in terms of forbidding practices which make registration a precondition to access basic rights including education, medical services and social security benefits.

The authorities should ensure that the procedures for processing residency and citizenship applications are transparent, particularly by guaranteeing legal representation and the right to appeal against decisions deemed discriminatory by the applicant.

Incidents of corruption among law-enforcement agents supervising the registration system should be tackled forcefully and discriminatory practices must be sanctioned.

Efforts to ensuring full and effective equality in respect of particularly vulnerable groups

Findings of the first cycle

The Advisory Committee noted the severe social and economic difficulties faced by certain minority groups, in particular, numerically small indigenous peoples and Roma, and called on the authorities to give increased attention to the situation of the population concerned.

Present situation

a) Positive developments

Since July 2001, a Federal Special Programme “Economic and Social Development of Indigenous Small Peoples of the North up to 2011” has been in place. Besides the development of indigenous cultures and education (see comments under Article 5), the aims of this programme include measures to assist the traditional economic activities of small indigenous peoples and measures to promote their health. These measures, combined with development programmes adopted at the level of the constituent entities of the Russian Federation, have produced some positive results. Examples include the development of a network of telemedical stations in 29 subjects of the Federation, which are able to consult clinical centres of Moscow, St Petersburg and Krasnoyarsk, and the renovation of diesel power plants in various villages of Krasnoyarsk *krai* for use by indigenous peoples.

On 28 August 2003, an Expert Group on Roma was set up under the auspices of the then Minister for Nationalities, which brought together representatives of Roma national-cultural autonomies and members of the key ministries dealing with social and economic issues.

b) Outstanding issues

The Federal Special Programme dedicated to the economic and social development of numerically small indigenous peoples has been criticised by representatives of the programme’s beneficiaries as insufficient, given the number of regions involved and the serious nature of the problems at stake. Moreover, it seems that, when drafting the Programme, the relevant federal authorities failed to take account of many of the proposals made by the indigenous peoples themselves. The information received by the Advisory Committee, moreover, suggests that the

economic and social difficulties faced by numerically small indigenous peoples have increased since the first cycle (see comments under Article 5).

The Advisory Committee regrets that it has not received more information about the results of the activities of the Expert Group on Roma, which reportedly stopped functioning in early 2004. Moreover, in spite of the Expert Group's early plans to establish country-wide assistance programmes, the Advisory Committee is not aware of any overall policy to ensure equal opportunities for Roma in the Russian Federation in spite of severe difficulties faced by Roma in terms of obtaining employment, housing and other basic social services.

The Advisory Committee notes that particular socio-economic difficulties, inconsistent with the principles of Article 4 of the Framework Convention, are faced by persons belonging to minorities that have been internally displaced by war (see also comments under Articles 5 and 6). Other groups which encounter greater difficulties as regards access to rights are persons belonging to national minorities which do not have, or reside outside of, their own territorial formations as well as persons belonging to "titular nations" (including several Finno-Ugric groups) which nevertheless find themselves in a vulnerable situation within their territorial formations (see comments under Articles 5, 9, 10 and 14).

Recommendations

The Advisory Committee urges the authorities to step up the amount of assistance provided to persons belonging to particularly vulnerable groups. Efforts are needed to ensure that assistance programmes aimed at these groups are adapted to their needs, including by engaging more actively in consultations with those concerned.

The conduct of law-enforcement officials

Findings of the first cycle

The Advisory Committee expressed concern about reports suggesting that, in some cases, persons belonging to particular national minorities were targeted for repeated and unjustified document checks by law-enforcement officials who thereby abused the system of residency registration.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that training programmes for law enforcement officials aimed *inter alia* at raising their awareness of discrimination in policing practices have taken place in several subjects of the federation (see also comments under Article 6).

b) Outstanding issues

According to non-governmental sources, Roma as well as persons originating in the Caucasus and Central Asia continue to be affected by selective and disproportionate stops and searches in many cities of the Russian Federation, a practice which in certain cases is reportedly accompanied by extortion, unlawful and unprovoked use of violence, forceful entry into homes and unwarranted detentions.

The Advisory Committee is particularly disturbed by what human rights organisations have described as a deliberate targeting of Roma settlements throughout the Russian Federation during a nation-wide police operation entitled *Tabor* (the Russian term for a Roma encampment) that took place between 2002 and 2004, although this has been denied by government officials.

Another disconcerting development, from the point of view of fighting discrimination, concerns the use of Cossack organisations in law-enforcement operations, a practice recently enshrined in federal legislation. The Advisory Committee considers the semi-official status enjoyed in this context by Cossacks in certain southern regions of the Russian Federation, including Krasnodar *krai*, to be problematic from the perspective of the Framework Convention, especially in view

of the fact that Cossack forces seem to be involved in a significant number of incidents involving violence and harassment against minorities (see also comments under Article 6). The Advisory Committee recalls that the state remains responsible for protecting human rights including in the provision of public services that it has delegated to non-state actors. The involvement of Cossack units in public order activities may also undermine the equal access to civil service employment of persons belonging to national minorities.

Recommendations

The Advisory Committee urges the authorities to monitor the behaviour of law-enforcement officials and ensure that any unwarranted targeting of persons belonging to particular national minorities is effectively sanctioned.

The Advisory Committee calls on the authorities to reconsider the use of Cossack organisations in law-enforcement activities in order to ensure that such activities are carried out in conformity with human rights and rule of law requirements. The Advisory Committee considers that the delegation of law-enforcement to one group of the population is problematic as such. Bearing in mind that the state remains responsible for the use of force even when it is delegated, the authorities should ensure that members of Cossack organisations that cooperate with law-enforcement organs receive adequate training, including as regards human rights, and that any incidents of violence or discriminatory behaviour among them are identified and prosecuted. The authorities should also ensure that the involvement of Cossack organisations in law-enforcement operations does not place persons belonging to national minorities at a disadvantage in their access to civil service employment.

30. Serbia

Opinion adopted on 19 March 2009

Legislative framework for prohibiting discrimination

Findings of the first cycle

The Advisory Committee found that the existing civil and criminal law provisions against discrimination would need to be developed further and that any undue citizenship requirement should be removed. The Advisory Committee called on the authorities to complete the work that they have initiated on a comprehensive law on non-discrimination.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that the 2006 Serbian Constitution contains important guarantees against discrimination (see Articles 21 and 76).

The Advisory Committee notes that a new law on non-discrimination is expected to be adopted in the near future. It expects that its content together with its practical implementation, will be fully in line with the recommendations made by the Venice Commission on a previous draft text. In particular, the Advisory Committee expects that the guarantees for the independence of the envisaged Commission for the Protection of Equality are in place and that it will be given all the necessary support to function effectively in practice.

Serbia adopted a new Criminal Code in 2006. It contains some valuable provisions against discrimination, including the prohibition of discrimination on, amongst other grounds, national or ethnic origin (Article 387), the prohibition of the violation of a citizen's right to use his or her mother tongue or alphabet (Article 129), the prohibition of the instigation of national, racial and religious hatred and intolerance (Article 317).

b) Outstanding issues

Although the law on non-discrimination is expected to be adopted in the near future, the Advisory Committee notes the delay in adopting such key legislation for the protection of persons belonging to national minorities.

The Advisory Committee notes that its recommendation to eliminate any undue citizenship criterion from all pertinent legislation in the field of national minority protection has not been fully addressed. It notes, for example, that certain provisions of the Criminal Code still refer to citizens (and not to “persons”) in areas of relevance for the protection of national minorities.

Furthermore, the Advisory Committee finds it problematic that the Serbian Constitution restricts to “citizens” the right to address international human rights institutions in order to protect the freedoms and rights guaranteed by Article 22 of the Constitution. Given the prevailing situation in Serbia regarding issues of citizenship (see Article 3 above), such a provision results in the exclusion of those non-citizens who form part of a minority group from accessing international human rights institutions.

Recommendations

The Advisory Committee invites the authorities to ensure that the law on non-discrimination is adopted without delay and that its implementation duly takes into account ECRI’s General Policy Recommendation N°7 on National Legislation to Combat Racism and Racial Discrimination.

The Advisory Committee calls on the authorities to ensure that any undue citizenship requirement is eliminated from legislation relevant to the protection of national minorities, including criminal legislation.

Positive measures*Findings of the first cycle*

Given the importance of positive measures, in particular for persons belonging to national minorities who were targets of discrimination in the past, the Advisory Committee found that such positive measures should be further developed in their respect.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that the Constitutional Court confirmed, in 2003, that measures taken at local level to ensure an appropriate participation of persons belonging to national minorities in local administration are not incompatible with Article 21 of the Law on National Minorities and Article 35 paragraph 2 of the Constitution on equal access to jobs and functions. The judgment in question concerns a decision by the municipality of Stara Pazova to give priority to candidates belonging to a national minority meeting the job requirements until an adequate proportion of employees belonging to a national minority in the municipal administration concerned is reached. The Advisory Committee considers that this decision is all the more welcome given that there remains scope for improving the situation of persons belonging to national minorities in terms of equality and participation in all sectors of public life (see also Article 15 below).

b) Outstanding issues

The Advisory Committee notes that Article 76 of the 2006 Constitution provides for the introduction of “specific regulations and provisional measures (...) for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority”. However, it finds it problematic that the adoption of such measures may be considered as discriminatory if they are taken for purposes other than eliminating “extremely unfavourable living conditions”. Such a provision reflects a restrictive approach to the concept of positive measures which is not compatible with the principles resulting from Article 4 paragraph 2 of the

Framework Convention. The Advisory Committee is aware that positive measures may give rise to a number of concerns and that they may be perceived as contrary to the principle of non-discrimination. The Advisory Committee recalls however that Article 4 paragraph 2 of the Framework Convention explicitly provides for the adoption of “adequate measures” and foresees that such measures shall not be considered to be an act of discrimination. Indeed, such measures are meant to address a situation of inequality between persons belonging to a national minority and those belonging to the majority, taking into account the circumstances of persons belonging to national minorities. The Advisory Committee would like to emphasize, as stated in the Explanatory Report of the Framework Convention, that such measures need to be proportional and adequate i.e. that they should not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

Recommendation

The Advisory Committee calls on the Serbian authorities to ensure that the legal provisions relating to the introduction of positive measures are fully in line with the principles contained in Article 4 paragraph 2 of the Framework Convention.

Monitoring discrimination and available remedies

Findings of the first cycle

In its first Opinion, the Advisory Committee urged the authorities to consider the setting up of specific structures to combat ethnic discrimination and considered that this issue should be included as a main element of the future work of the offices of the State and Provincial Ombudsman which were to be established.

The Advisory Committee regretted that no detailed statistics were available on the implementation of civil or criminal law provisions on ethnic discrimination and asked the authorities to step up its monitoring in this field.

The Advisory Committee also emphasized that the shortcomings in the effectiveness and independence of the judiciary in Serbia, should be addressed as a matter of priority, in so far as they affect negatively the implementation of the Framework Convention.

Present situation

a) Positive developments

The Law on the Protector of Citizens (hereinafter referred to as “Ombudsman”) was adopted in 2005. The Ombudsman was appointed in June 2007 and one of his four Deputies is responsible in particular for the protection of national minorities. During its visit, the Advisory Committee was pleased to note that one of the main priorities of the Ombudsman is to achieve a more unified system of minority protection in Serbia and welcomed the fact that this had already been consolidated by the adoption of some valuable initiatives to monitor the implementation of minority rights at local level. The Advisory Committee also welcomes the plan of the Ombudsman to set up an office in South Serbia, a region in which there is no such institution at present.

Besides the State level Ombudsman, the Ombudsman of Vojvodina was appointed in 2004 in accordance with the 2002 decision of the Assembly of the Autonomous Province and a number of municipalities, including the city of Belgrade, have their own ombudsmen, in accordance with the 2004 Law on Local Self-Government. The Advisory Committee finds that, provided that it is further expanded to all municipalities and that adequate coordination is ensured, the future network of Ombudsmen has a potentially important role to play in contributing to the implementation and monitoring of the Framework Convention in Serbia.

b) Outstanding issues

The Advisory Committee notes the delay in appointing the State level Ombudsman and that more than a year after his nomination, he has still not been able to move to the building he was

allocated and that instead his office has been hosted in various premises, including, more recently, in governmental premises. Such a situation is undermining the importance attached to the role and the independence of the Ombudsman together with his accessibility for persons belonging to national minorities.

The Advisory Committee notes that it is acknowledged that discrimination often goes unreported in Serbia. The Provincial Ombudsman of Vojvodina explained, for example, that his office received very few complaints from persons belonging to the Roma minority, despite the fact that cases of discrimination against persons belonging to this minority are regularly reported by civil society. This is even more so in the judiciary, which has not yet sufficiently addressed problems of discrimination, although some cases - albeit too limited - have been taken up regarding the instigation of racial hatred (see Article 6 below). Such a situation, which may be explained by the lack of confidence and awareness of the persons concerned in the existing human rights protection institutions, should be addressed urgently.

Recommendations

The Advisory Committee finds it essential that the State level Ombudsman's future work in the field of minority rights receives adequate support. The Serbian authorities should take the necessary measures to ensure that the ombudsmen institutions at all levels are in a position to perform their tasks efficiently and that they are known and accessible, in particular to persons belonging to national minorities, including in their language.

The Advisory Committee calls on the authorities to take measures to increase, among the population, awareness of their rights as well as strengthen the confidence in the judiciary among persons belonging to national minorities to address cases of alleged discrimination to the Courts.

The situation of the Roma

Findings of the first cycle

The Advisory Committee found that the situation of Roma in fields such as housing, education and employment remained extremely difficult and that, in some settlements, their housing and health situation was alarming which was not compatible with Article 4 of the Framework Convention. It invited the authorities to address the legal status of informal Roma settlements, as well as to support initiatives to improve the access of Roma to personal documents. It considered that a strategy for the integration of Roma needed to be adopted as a matter of urgency.

Present situation

a) Positive developments

The Advisory Committee acknowledges the efforts made by the Serbian authorities to address the extremely difficult situation in which Roma find themselves. In 2005, Serbia joined the Decade of Roma Integration (2005-2015) and instead of a National Strategy on Roma, it adopted four national action plans in the field of employment, housing, education and health. Furthermore, a comprehensive strategy on Roma (hereinafter referred to as "National Strategy on Roma") is to be adopted soon. A Roma National Strategy Secretariat has been set up within the then Office and now Ministry of Human and Minority Rights. Persons belonging to the Roma minority have been included in this structure, which is a positive signal. At the level of the Province of Vojvodina, an Office for Roma Inclusion was established in 2005. The Serbian Government has committed itself to increase the financial allocation to measures targeting the Roma population.

Some valuable initiatives have been taken within the above-mentioned institutional and policy framework. The Advisory Committee notes, in particular, the specific measures taken by the National Employment Office to attract Roma to self-employment projects. At the level of

Vojvodina, the contribution of the Office for Roma Inclusion in facilitating employment of Roma has been positively assessed by Roma representatives.

The Advisory Committee welcomes the fact that the Serbian authorities acknowledged the need to address the situation of Roma who lack personal documentation. A law on legal personality is being prepared in order to regularise their situation, which is a positive first step. (see also Article 3 above).

Guidelines for the Upgrading and the Legalisation of Roma Settlements have been adopted as an initial measure aimed at addressing the housing situation of the Roma. Regularisation of property status of housing in some Roma settlements should now have begun in those municipalities which have adopted decisions on legalisation and signed agreements with construction agencies. The authorities have taken steps to put an end to the unacceptable living conditions of the Gazela Roma settlement in Belgrade and a relocation plan has been adopted even though the process leading to its adoption has triggered criticism and difficulties (see also Article 6 below).

The Ministry of Health has been praised to be one of the few ministries to have earmarked funds from its own budget to finance the implementation of the Roma Health Care Plan from 2006 till 2008. The Advisory Committee welcomes its pro-active co-operation with civil society organisations and local authorities.

b) Outstanding issues

The commitment of the Serbian authorities to improve the socio-economic situation of the Roma has not yet led to substantial changes in practice. The gap separating the Roma from the rest of the population persists and so do the serious difficulties which many of them continue to face. The National Action Plans have regularly lacked resources and with some exceptions (see paragraph 79 above), no funds were clearly earmarked from the State budget for their implementation. As a consequence, they have, for the most part, relied on international donors. This has caused difficulties for the continuity of the measures taken and can demonstrate a lack of ownership and commitment.

Coordination between various ministries has proved difficult in the absence of clearly established structures, and calls for the institutionalisation of the implementation and monitoring of the Roma Strategy, have repeatedly been made by Roma representatives, NGOs as well as international actors. In the meantime, the evaluation of the progress made has mainly rested on the non-governmental sector, notably with the League for the Roma Decade, a coordinating body of Roma NGOs.

The National Action Plans do not oblige the local government to adopt their own plans taking into account local circumstances and to earmark funding for measures aimed at improving the situation of the Roma. While some municipalities have taken initiatives to adopt their own plan, the general lack of commitment of local authorities has been identified as a particular weakness for the implementation of the Roma Decade Action Plan.

The Advisory Committee is deeply concerned about the situation of the many Roma who still lack personal documents. This concerns local Roma and internally displaced Roma, Ashkali and Egyptians from Kosovo*, who many years after their displacement, find themselves without the basic documentation needed to access a number of social rights (see also Article 15 below). The Advisory Committee is aware that some valuable initiatives have been taken by some local NGOs with the support of the international community, such as the provision of free legal aid. However, it regrets the fact that no decisive measures have been taken so far by the Serbian authorities to tackle effectively this situation. As a result, it is estimated that 30% of the approximately 206 000 internally displaced persons (IDPs) recorded in Serbia are still without personal documents. Procedures for obtaining personal documents remain lengthy, unnecessarily bureaucratic and they place an unreasonable burden on IDPs to acquire documentation. In addition, it has been reported that IDPs often lack adequate information about their rights and that the registry offices have failed to devote sufficient attention to this.

The Roma Gazela settlement which has been the subject of recent attention by the authorities (see also above) is one of the many examples of illegal settlements existing in Serbia. Although nation-wide data on the housing situation of the Roma is not available, some studies have indicated that out of the 593 existing Roma settlements in Serbia, 72% have not been legalised. Many of the Roma, Ashkali and Egyptian IDPs who do not have access to collective accommodation, live in those informal settlements, sharing the same precarious situation as the local Roma population. In addition, the Advisory Committee was informed that Roma are still faced with forced eviction without being offered any alternative accommodation.

The Advisory Committee is deeply concerned by the fact that in many regards, the hygienic and sanitary conditions in many of these settlements have not improved since its first Opinion in 2003. Roma organisations, including Romani women organisations, describe the health situation of Roma, in particular Roma women, children and elderly as particularly alarming and highlight the difficulty to access health care in the absence of the necessary medical registration. The Advisory Committee finds that such a situation is not compatible with Article 4 of the Framework Convention. Against this background, the Advisory Committee regrets the fact that the National Action Plan on Health, which provided for the introduction of a system of health mediators, has been implemented too slowly to address adequately the urgency of the situation.

Recommendations

While building on the experience so far, Serbia should ensure that the National Strategy on Roma to be adopted is provided with sustainable coordination and implementing structures, as well as adequate human and financial resources. The authorities should secure the full involvement of local authorities in its implementation as well as provide for regular evaluations, in consultation with Roma representatives, of the progress achieved at national, provincial and local levels, by setting clear targets and collecting reliable data.

The Serbian authorities should pursue the implementation of their measures regarding the legalisation of Roma settlements and ensure that they are coupled with adequate financial means and with the increased involvement of the local authorities. Serbia should ensure that legal guarantees are in place to provide those persons concerned by an eviction order, with prior information, adequate alternative accommodation as well as the possibility to appeal the decision.

The Advisory Committee urges the Serbian authorities to redouble efforts to address the particularly critical health situation of many Roma, especially women, children and the elderly. The appointment of additional health mediators should be pursued as a matter of urgency.

31. Slovak Republic

Opinion adopted on 26 May 2005

Legal and institutional protection against discrimination

Findings of the first cycle

In its first Opinion on Slovakia, the Advisory Committee encouraged further efforts to expand the scope of legislative guarantees against discrimination by both public authorities and private entities. In this context, it noted that the establishment of an Ombudsman Office was under consideration. The Advisory Committee regretted the fact that the Government was not in a position to provide detailed information on the cases of discrimination investigated and brought to trial in various fields ranging from health care to education.

Present situation

a) Positive developments

The Advisory Committee welcomes the numerous measures taken by the Slovak authorities since the first monitoring cycle to improve the legal and institutional framework and enforcement procedures in the area of equality and the prohibition of discrimination. Act No.

365/2004 Coll. On Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act), amending and supplementing certain other laws, was adopted on 20 May 2004. This Act contains a ban on all forms of direct and indirect discrimination based in particular on national or ethnic origin. The Anti-discrimination Act has a broad scope of application, covering numerous fields such as employment, social security, health care, education and also the provision of goods and services. It also contains promising innovations: it provides in particular for the reversal of the burden of proof in judicial proceedings and tasks the Slovak National Human Rights Centre to monitor its implementation, develop awareness-raising activities about the fight against discrimination and arrange legal aid to victims of discrimination and expressions of intolerance.

It will be possible to assess more fully how the Anti-discrimination Act, which entered into force in July 2004, is working in practice once judicial decisions are available and NGOs and minority associations have gathered sufficient practical experience of this instrument. It seems, however, that a number of complaints have been received so far alleging discrimination in social welfare as well as in employment relations and there may be a need to ascertain whether persons belonging to certain minorities, like the Roma, are frequently among the complainants.

Constitutional Act No. 564/2001 Coll. on the Public Defender of Rights established the institution of the Ombudsman in Slovakia and the first incumbent took office in 2002. During its first three years of existence, the Ombudsman received 6,408 motions covering a range of sectors of relevance to persons belonging to minorities. It is also worth underlining the establishment, in 2003, of a Department of Equal Opportunities and Anti-discrimination within the Social Inclusion Division of the Ministry of Labour, Social Affairs and Family. This Department has taken an active part in the implementation of the governmental strategies on the Roma and has, in this context, paid particular attention to Roma women. There is also reason to welcome the expansion of the activities of the Plenipotentiary for Roma communities, which has been in a position to increase its staffing resources as well as to open several regional offices.

b) Outstanding issues

Article 8, paragraph 8 of the Anti-discrimination Act, which provides for the possibility to adopt specific positive measures to address disadvantages linked to racial or ethnic origin, has regrettably not entered into force to date. As proposed by the Ministry of Justice, the Government lodged a request for interpretation with the Constitutional Court in October 2004 in order to verify the constitutionality of this provision, which was incorporated in the Anti-discrimination Act at the initiative of the Parliament. According to the Ministry of Justice, the very concept of positive measures would not be compatible with the principle of equality and no preferential treatment should therefore be based on ethnicity or nationality. The Constitutional Court is due to review the complaint in spring 2005 and, depending on its ruling, Article 8, paragraph 8 of the Anti-discrimination Act will or will not enter into force.

The Advisory Committee recalls that Article 4 of the Framework Convention and the related paragraphs of the explanatory report, as well as other international human rights instruments, make it very clear that special measures are not only legitimate but may even be required under certain circumstances in order to promote full and effective equality in favour of persons belonging to national minorities. Provided they are in conformity with the proportionality principle, such measures shall therefore not be considered an act of discrimination. The Advisory Committee is of the opinion that without such measures being taken, it is extremely difficult to reach full and effective equality between persons belonging to vulnerable minorities and those belonging to the majority. Moreover, it is to be noted that a number of institutional arrangements and special measures have already been introduced in Slovakia, such as the post of Plenipotentiary for Roma communities as well as the recruitment of Roma social workers and school assistants. In this context, there is reason for concern that the current constitutional dispute may have a chilling effect or even a negative impact on such laudable initiatives.

As regards the fight against discrimination and the promotion of effective equality, improvements are required in the area of monitoring so that the results of governmental policies and measures can be assessed more effectively. It appears, for example, that out of the numerous applications lodged in these areas with the Ombudsman or with the competent authorities on the basis of the Anti-discrimination Act, a significant number seem to concern persons belonging to national minorities, including the Roma. Generally speaking, the authorities do not seem to gather adequate data on the implementation of the pertinent legislation pertaining to discrimination, including the number of civil and criminal cases brought before the judiciary and information on the resulting decisions.

Recommendation

The authorities are invited to step up their efforts to ensure prompt and full implementation of the new Anti-discrimination Act, including by providing the necessary support to the Slovak National Human Rights Centre. Slovakia should also introduce enhanced and inclusive methods of monitoring developments and, in this context, pay increased attention to the specific situation of persons belonging to national minorities in a range of sectors like employment and health care. In the context of the constitutional dispute on the Anti-discrimination Act, care should be taken not to jeopardise the positive measures in favour of disadvantaged minorities and efforts should be made to ensure adequate recognition of the importance of such measures within the public administration.

Situation of the Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the fact that the Government had designed a range of initiatives - including through the 1999 Roma Strategy - aimed at promoting full and effective equality for the Roma, but stressed at the same time that adequate attention was to be paid to, and resources allocated for, their implementation. In its corresponding Resolution, the Committee of Ministers pointed out that, despite efforts made, real problems concerning the Roma remained, in particular discrimination in various fields and the extremely wide socio-economic differences with the majority population.

Present situation

a) Positive developments

The Advisory Committee is pleased to note that governmental initiatives aimed at promoting full and effective equality for the Roma are regularly reviewed and supplemented in a constant effort to increase their efficiency. For example, in 2002, the Slovak Government approved its priorities with regard to the Roma communities on the basis of a detailed evaluation of the state of implementation of the 1999 Roma Strategy. In 2003, the Government formulated its “Basic Positions on the Roma Communities’ Integration Policy” (hereinafter: the “Basic Positions”), which lists several mid- and long-term measures in key areas, such as education, employment, the social sector, housing and health.

One chapter of the “Basic Positions” is entitled “Affirmative action – achieving equal opportunities”. It stresses the relevance of such action to ensure equal opportunities, while stating that they are compatible with Articles 12 and 34 of the Constitution and provided for in international human rights instruments, including the Framework Convention. More generally, it is positive to see that the “Basic Positions” identify concrete shortcomings and even violations of the rights of the Roma when formulating priority actions in the various fields concerned. This approach should help measure the efficiency of the priority actions in future evaluations of government policies.

b). Outstanding issues

The commendable objectives set in the “Basic Positions” and the various priorities expressed therein are not always consistently implemented in practice. Responsibility for implementation

lies with the competent ministries, which do not all manifest the same degree of commitment towards the common objectives and the same approach to basic concepts. For example, some ministries seem to have shown reluctance to endorse the concept of special measures in their sphere of activities and to take ethnic background into account to target their measures. Furthermore, delays have been noted in the introduction of planned measures, such as the Social Field Workers Programme. The Plenipotentiary for Roma Communities, whose main role is to coordinate the implementation between the various ministries concerned, does not seem to have sufficient powers to redress such shortcomings.

As a general point, the Advisory Committee underlines that the involvement of representatives of the Roma communities both in the assessment made of the 1999 Roma Strategy and in the formulation of the “Basic Positions” does not seem to have been sufficient, despite the adequate representation of Roma staff members in the office of the Plenipotentiary for the Roma Communities (see related comments under Article 15 below). It is indeed essential to treat the Roma as key partners in such programmes and to consistently associate them in the design, implementation and monitoring of the various measures taken by the different ministries.

While bearing in mind that most measures envisaged to improve the socio-economic situation of the Roma require mid- and long-term efforts, the Advisory Committee notes that the impact of the 1999 Roma Strategy and the “Basic Positions” has not yet been up to the level of expectations in key sectors, such as education (see related comments under Article 12 below), housing and employment. For example, numerous concurring reports suggest that there has been no tangible improvement concerning the living conditions in most of the Roma settlements, where sub-standard living conditions continue to prevail. Many of these settlements are still without basic sanitary facilities, heating, running water, electricity and with insufficient access to health care facilities. Similarly, inconsiderable progress has been recorded in the chronic underemployment of the Roma population.

The Advisory Committee notes that negative consequences of the 2004 reform of the social aid policy are still widely felt among disadvantaged groups, in particular among the Roma. While the general aim of the reform was to eliminate systematic shortcomings of the former system, which the authorities saw as discouraging people from seeking employment, the new system has affected the poorest families particularly harshly, especially those with several children, living in economically depressed areas with very few employment opportunities. Indeed, measures such as the introduction of a limit on the total amount paid for dependency allowances, regardless of family size, particularly affected many Roma families with several children. The new definition of material hardship, based on a distinction between “subjective” or “objective” reasons, where lower benefits are allocated for “subjective” reasons, have meant that many unemployed Roma are now receiving lower levels of payments. It is, however, widely acknowledged that in many municipalities with large Roma communities, especially in Eastern Slovakia, it is extremely difficult for these persons to find jobs given the persisting high rate of unemployment and widespread discrimination against Roma by many employers.

Certain corrective measures have been taken by the authorities following social unrest in Eastern Slovakia in February 2004, with a view to softening the impact of the reform for the most vulnerable persons while maintaining its general approach. These include the development of so-called “activation benefits”, which make it possible to support re-qualification courses, temporary working programmes, etc. Various sources, however, suggest that the overall consequences of the 2004 social reform are not carefully examined and that further corrective measures still need to be devised. For example, fears have been expressed by NGOs that access to education of children - and especially girls - from poor Roma families living in informal settlements may be negatively affected by the social reform in that parents may in the future be more reluctant to send their children to school because of their strained financial situation (see related comments under Article 12 below). Concerns have also been expressed that more families might soon face forced evictions because they have increasing difficulties to pay their rent.

Recommendations

Stronger support and more determined action is required from the various ministries for the overall implementation of the 2003 “Basic Positions”, including addressing the situation of informal settlements and providing them with basic infrastructure on a non-discriminatory basis. In so doing, care should be taken to consult the Roma more consistently, including in the evaluation phase.

The authorities should monitor both the direct and indirect consequences of the 2004 social reform, in particular in the fields of education and housing, for disadvantaged groups, including the Roma and in particular Roma girls and women. Any resulting negative impact on the full and effective equality of these groups should be addressed.

Allegations concerning the sterilisation of Roma women without their prior free and informed consent and discrimination of Roma in access to health care

Findings of the first cycle

In its first Opinion, the Advisory Committee expressed particular concern about credible reports concerning *de facto* discrimination in particular against Roma in health care facilities.

Present situation

Following NGO allegations of sterilisation of Roma women without their prior free and informed consent, the authorities initiated criminal investigations on the basis of “genocide” as defined by Slovak criminal law. These investigations were closed in October 2003 as they did not establish the commission of such a crime against the Roma population. In the context of these criminal investigations, the Ministry of Health set up a commission composed of gynaecology and obstetrics experts to carry out an inspection of medical records covering a period of several years, including in the medical establishments of Krompachy and Gelnica. This inspection, which reportedly did not include sufficiently independent expertise, did not find grounds to sustain the commission of genocide, segregation or discriminatory practices. Consequently, the Government did not accept any political responsibility for the performance of alleged illegal sterilisations as such sterilisations were not deemed to have ever been an official policy in Slovakia. Despite regrettable threats by some authorities, upon decision of the General Prosecution Office, criminal proceedings were eventually not brought against the authors of the NGO report alleging forced or coerced sterilisations.

The Advisory Committee, which has discussed these issues extensively with the authorities in the context of a follow-up seminar organised in Bratislava on 8 July 2003, recalls that other international bodies have expressed concern at the above-mentioned allegations of forced sterilisations and at the way in which these have been investigated at the domestic level, as well as issued recommendations on the subject. Encouraged by these various calls to pursue investigations further with a view to identifying and remedying any systematic problem detected in the access of Roma to health care in Slovakia, the Government has subsequently identified shortcomings in the health care legislation and concluded that administrative irregularities in the way in which consent to sterilisation was being obtained from patients had been committed by certain doctors and medical establishments. This led the Government to adopt an important resolution instructing the Ministry of the Interior and the Ministry of Health to take a range of measures and to initiate, *inter alia*, amendments to the relevant health care legislation.

The Advisory Committee welcomes the adoption by the Parliament, on 21 October 2004, of several key legislative changes aimed at responding to the shortcomings identified in the health care legislation. These amendments, which entered into force on 1 January 2005, lay down in a very precise manner the conditions in which informed consent is to be sought from a person who will be provided with medical care or undergo a medical operation, as well as the requirements regarding the prior information this person has to be given. Moreover, rules regulating access to medical records have been improved, enabling for example their consultation by an authorised attorney and entrenching the right to make copies of the files *in*

situ. Reinforced specific guarantees have been included as concerns informed consent for sterilisation and the crime of illegal sterilisation has been introduced in the penal code. These amendments seem to respond to many of the concerns expressed by both NGOs and international bodies in relation to the legislative framework. As regards practice, NGOs report on positive changes following the public debate on the issue of forced or coerced sterilisations and the entry into force of the aforementioned legislative changes. The Advisory Committee notes, however, that improved access to medical records based on these legislative amendments has allegedly been occasionally refused in the hospital of Krompachy to those concerned in early 2005, on the ground that implementing regulations and specific instructions from the Ministry of Health were still missing.

The authorities informed the Advisory Committee, during its visit to Slovakia, that a number of individual applications by alleged victims claiming civil compensation for alleged forced sterilisations had been dealt with or were still pending before various district and regional courts. It may also be that higher judicial authorities may have to pronounce themselves on these questions at a later stage. No judgement has allocated financial compensation to any of the applicants so far but the Advisory Committee considers it important that the Slovak Government closely monitors such judicial developments in the future, as they might help to identify further administrative or other deficiencies.

As regards discrimination more generally in the access of the Roma to health care, the Advisory Committee notes with concern persisting allegations of segregating measures at the expense of the Roma, including physical separation from non-Roma patients in certain hospitals or special consulting hours by certain doctors. Many Roma settlements lack health care facilities and services within a reasonable distance, and ambulances and doctors appear at times to be reluctant to enter Roma settlements when called upon to intervene. It is positive that the “Basic Positions” of the Government clearly acknowledge such phenomena and stress the need to tackle them.

Recommendation

The authorities should continue to closely monitor judicial developments in civil proceedings and, if need be, should consider the reopening of criminal investigations for bodily harm or other criminal offences. Efforts should also be made to ensure that legislative amendments aimed at reinforcing guarantees linked to free and informed consent and access to medical files are consistently applied in practice. As regards non-discriminatory access of the Roma to health care, existing measures should be intensified to tackle remaining problems more vigorously, including through public awareness-raising activities and increased efforts to adapt health care services to the linguistic and other needs of the Roma, in particular Roma women.

32. Slovenia

Opinion adopted on 26 May 2005

Legal and institutional protection from discrimination

Findings of the first cycle

In its first Opinion on Slovenia, the Advisory Committee encouraged the authorities to develop and strengthen arrangements for legal and institutional protection from discrimination, and to step up information and awareness-raising measures for the public in this area.

a) Positive developments

The Advisory Committee notes that, in May 2004, Slovenia passed an Act on Equal Treatment, aiming to transpose the European Union Directive n° 2000/43/EC on Equal Treatment Irrespective of Racial or Ethnic Origin into national law. At the institutional level, it notes the recent setting up, within the Government, of a Council for the Implementation of the Principle of Equal Treatment - where only the Hungarians, the Italians and the Roma are represented - and the establishment of the institution of Advocate for the Principle of Equality, responsible for

dealing with complaints of discrimination. The Advisory Committee expresses the hope that every effort will be made to ensure that this institution enjoys the necessary independence.

The Advisory Committee also welcomes the work and particular commitment of the Ombudsman in promoting the principles of equality and non-discrimination. The efforts of the Slovene Constitutional Court, through its case-law, to ensure the effective implementation of the aforementioned principles in Slovenia (see paragraphs 55 and 93 below) are also to be welcomed.

b) Outstanding issues

Aside from the information provided on the situation of Roma in various sectors and the measures taken to address the problems faced by these persons, the State Report does not supply information about the frequency of cases of discrimination against persons belonging to minorities, the associated investigations and the action taken. The Advisory Committee considers that the limited number of complaints of discrimination submitted to the relevant public institutions might also indicate that the victims of such acts are inadequately informed, and that the persons concerned lack confidence in the ability of those institutions to afford them protection and help them secure compensation.

Recommendations

Additional monitoring measures are needed with a view to obtain more accurate information on the effective implementation of the principle of non-discrimination in respect of the persons belonging to national minorities and on any violations of this principle. Increased efforts should also be made to better inform the general public and public institutions about the principles of equality and non-discrimination and the remedies available to the victims of discrimination.

The authorities are encouraged to take all necessary measures to ensure the effective implementation of the Act on Equal Treatment and the smooth operation of the institutions established under that Act. In this context, it is essential to ensure that the views of the persons belonging to the various ethnic groups living in Slovenia are taken into account.

At the same time, the authorities should provide the Ombudsman with their full support, and ensure that his recommendations generate the expected response from the relevant public institutions.

Legal status of persons deleted from the list of permanent residents

Findings of the first cycle

In its first Opinion on Slovenia, the Advisory Committee noted with concern the problematic situation of a number of former citizens of other republics of former Yugoslavia (SFRY), who found themselves foreigners in the territory they were living in and without confirmed legal status, following their removal from the register of permanent residents, in 1992.

Present situation

a) Positive developments

The Advisory Committee notes that a number of positive developments have taken place in this area. For instance, the Constitutional Court has taken a stand on these issues by clearly stating the need to restore, without further delay and retrospectively, the rights of non-Slovene former Yugoslav citizens who were, according to the Court, illegally removed from the register of permanent residents. The Advisory Committee also notes that efforts have been made at the legislative level to regularise the legal status of these persons, and that most of them have been granted permanent resident status in recent years on the basis of individual decisions issued by the Ministry of the Interior.

b) Outstanding issues

The Advisory Committee notes with concern that, despite the relevant Constitutional Court decisions, several thousand persons whose names were deleted from the registers of permanent residents on 26 February 1992, and automatically transferred to the registers of foreigners, are still, more than ten years on, awaiting clarification of their legal status. This concerns citizens of other former Yugoslav republics, including a number of Roma, who were legally resident in Slovenia and, for various reasons, did not wish – or were unable – to obtain Slovene citizenship within the short time-limit allowed by the authorities after the country's independence.

In many cases, the lack of citizenship or of a residence permit has had a particularly negative impact on these persons' situation. It has, in particular, paved the way for violations of their economic and social rights, with some of them having lost their homes, employment or retirement pension entitlements, and has seriously hindered the exercise of their rights to family life and freedom of movement.

The Advisory Committee notes that more recent government initiatives have sought, in accordance with the relevant decisions of the Constitutional Court, to restore these persons' rights retrospectively. It finds it disturbing that these initiatives have been stalled for over a year, and that the social climate in Slovenia has not been conducive to a speedier resolution of these matters. In the referendum held in April 2004 on the Act on the Implementation of Item n°8 of Constitutional Court Decision n° U-I-246/02 (the so-called "Technical Act on Erased Persons"), 94.7% of participants (representing 31.45% of voters) expressed their opposition to this Act (see also comments under Article 6 below).

The Advisory Committee notes that the authorities are in the process of drafting, at the governmental level, a new normative text expected to provide solutions to the problems mentioned above. Insofar as this new initiative is not yet in the public domain, it is difficult to ascertain, at this stage, whether the measures envisaged – legislative or other – will be likely to resolve the situation in a comprehensive manner once and for all.

Recommendations

Without further delay, the authorities should find solutions to the problems faced by non-Slovenes from former Yugoslavia (SFRY) who have been deleted from the register of permanent residents, in connection with the regularisation of their legal status, including access to citizenship and social and economic rights.

At the same time, they should assist these persons in their efforts to overcome the difficulties arising from this situation, and facilitate their effective participation and integration in the Slovene society by means of targeted measures.

Implementation of the principles of equal treatment and non-discrimination in respect of the Roma

Findings of the first cycle

In its first Opinion on Slovenia, the Advisory Committee found that there were considerable socio-economic differences between most of the Roma and the rest of the population, and urged the authorities to adopt more decisive measures to remedy the situation. In view of the persistence of discriminatory practices towards the Roma in most fields, the authorities were urged to combat this problem by every possible means.

Present situation

a) Positive developments

The Advisory Committee welcomes the efforts made by the authorities in many areas with a view to improving the living conditions of the Roma. Specific education and employment projects developed and financed by the relevant ministries, in some cases with international support, have supplemented the national programmes adopted in 1995 and 2000 with a view to

gradually eliminating the disparity between the socio-economic situation of Roma and that of the rest of the population. The Advisory Committee also notes the development – currently in progress – of new health and social security measures that are more geared to the specific situation of the Roma, and, more generally, the existence of a genuine political commitment to helping the Roma emerge from the precarious situation in which they continue to find themselves. More attention is now being paid to involving the Roma in the development and implementation of such measures.

At the local level, some municipalities have made provision in their local development plans and strategies for various forms of support for this population. In this connection, the Advisory Committee notes the financial assistance granted in recent years to the municipalities concerned with a view to improving the housing conditions of the Roma. Furthermore, according to the State Report, the legislation on spatial planning now establishes a legal basis for finding ways of legalising illegal Roma settlements.

The Advisory Committee is pleased to find that the authorities' efforts, with active involvement of the Roma, are gradually yielding results in this area. The impact of their action is particularly clear in some cases, as the Committee observed in the region of Prekmurje, where Roma are in a more favourable socio-economic situation and well integrated.

b) Outstanding issues

The Advisory Committee notes that, although improvements in the situation of the Roma have been reported in some regions, this does not apply to the whole Roma population or to all of the localities where Roma communities have settled. In some cases, as in the Dolenjska region, Roma continue to face problems in a range of fields, particularly when it comes to housing conditions, employment, health and education. These differences between Roma residing in different localities appear to result from numerous factors, including the political commitment of local authorities, regional economic development and the involvement and efficacy of Roma councillors and organisations.

The Roma continue to face a particularly difficult situation in respect of housing. Many Roma live on sites isolated from the rest of the population, and their living conditions are generally below minimum standards, owing to a lack of adequate infrastructure - electricity, running water, access to transport, etc. The Advisory Committee notes that these problems are often accentuated by the reluctance of certain local authorities, in the face of the prejudices of the non-Roma population, to make more efforts to assist the Roma and to use local resources for this purpose. On the other hand, it notes cases where struggling Roma families have been evicted and subsequently rehoused in settlements that are separated from the rest of the population and lack adequate facilities (see also comments under Article 6 below).

In addition, the problem of settlements having become illegal after 1991 is still ongoing. The new legal framework applicable to this situation and the assistance measures announced by the Government are very recent, and are only just beginning to be implemented.

In the education sector, it is reported that some Roma children continue to attend separate classes, and that the practice of unjustified placement of Roma children in "special" schools (for children with special needs) has not been completely eliminated (see also comments under Article 12 below).

In the employment sector, various estimates, including those of the Government, indicate a particularly high rate of unemployment among the Roma (exceeding 80%, according to some sources). The reasons given for this situation include inadequate levels of education and qualifications and the persistent prejudice against such persons in the labour market. According to government sources, temporary work is prevalent and regular employment is rare among the Roma. The same sources indicate that most Roma live off income derived from social welfare, child benefits and other forms of state support, which often leads to tensions between them and the non-Roma population at the local level.

In addition to the problems highlighted in the preceding paragraphs, the Advisory Committee finds the distinction between “autochthonous” Roma and “non-autochthonous” Roma – which some authorities continue to make – problematic, and considers that, where applied, this approach leads to discriminatory practices. It notes that, although “non-autochthonous” Roma often face the same problems, they are not systematically covered by the measures provided for in government programmes to improve the socio-economic situation of the Roma community or to combat poverty and social exclusion (see also comments under paragraphs 30, 31, 41 above).

The most vulnerable Roma in Slovenia are undoubtedly those whose legal status has still not been regularised. The Advisory Committee notes with concern that, as yet, the authorities have not been able to come up with a proper solution to the problems faced, in attempting to obtain Slovene citizenship or a residence permit, by some of those Roma who were legally resident in Slovenia in 1991. The Advisory Committee also notes the problems faced for a number of years by Roma from Kosovo*, who have stayed in Slovenia but have lost their temporary refugee status. Without identity papers, these people face numerous problems in various areas, particularly when it comes to access to health care, housing and social welfare, as well as education.

Recommendations

The authorities should continue, and step up, the initiatives and programmes designed to improve the situation of the Roma, particularly in the areas of housing, employment and education, and allocate adequate resources to them. In this connection, it is particularly important to ensure that the measures in question are geared to the needs of the Roma, by actively involving the latter in the various stages of development, implementation and evaluation of such measures.

In planning and developing assistance measures, the authorities are strongly encouraged to adopt an inclusive approach and to avoid making distinctions among the Roma that are likely to result in the exclusion, in a discriminatory manner, of certain persons from the scope of such measures. Urgent consideration should be given to the specific situation of Roma awaiting regularisation of their legal status.

33. Spain

Opinion adopted on 22 February 2007

Combating discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee found that the anti-discrimination provisions in Spanish legislation were rarely applied in practice and that the cases coming before the courts did not reflect the actual number of acts of discrimination or racism.

The Advisory Committee hoped that the establishment of a specialised body for combating discrimination, envisaged by the authorities, would make recourse to the relevant legislation more effective and raise awareness in Spanish society about discrimination.

Present situation

a) Positive developments

The Advisory Committee notes with satisfaction that Spain’s legislative provisions for combating discrimination have recently been strengthened through measures taken in December 2003 to transpose European Council Directives 43/2000 and 78/2000 into Spanish legislation. The resulting legislation reinforces the previous provisions in a number of ways, including by extending protection against discrimination, by public or private entities, to additional relevant fields, including employment, vocational training, social protection, social advantages, education, access to and supply of goods and services such as housing and places of entertainment. The transposed legislation also calls for the creation of a specialized body that

will provide assistance to victims of discrimination – the “Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin” (henceforth, the Council on Equal Treatment). The Advisory Committee notes the assurances given by the Spanish authorities as regards the independence of this envisaged body, *inter alia* by proposing the inclusion of non-governmental organisations, trade unions and other civil society actors in its board of directors.

The Advisory Committee is pleased to note that, in addition to the Ombudsperson at national level, regional Ombudspersons, empowered to receive and act on complaints of discrimination with respect to the actions of public authorities, now exist in eleven out of Spain’s 17 autonomous communities. This is important in view of the decentralisation of legislative and regulatory competences in a number of key areas relevant to minority protection, including education and housing policy. The Advisory Committee takes note of the commendable efforts made by the Ombudspersons of Andalusia and Galicia to highlight shortcomings in their respective Administrations’ policies toward Roma, particularly in regard to the latter’s access to housing.

b) Outstanding issues

According to information received from non-governmental organisations, the number of discrimination complaints registered in Spanish courts is very small compared to the number of acts of discrimination that, reportedly, continue to take place in all key sectors of economic and social life. The Advisory Committee regrets that precise information on incidents of discrimination, and on the registration of complaints concerning discrimination in courts, is not systematically collected in Spain. Such data is needed to evaluate properly the effectiveness of anti-discrimination provisions.

The fact that victims of discrimination rarely appeal to courts suggests that there is little awareness of, and confidence in, available remedies for combating discrimination within Spanish society. The Advisory Committee is concerned about reports which suggest that there is not enough awareness within the Spanish judiciary of the problem of discrimination and provisions against it. The Advisory Committee regrets in this context the way in which Directives 43/2000 and 78/2000 were transposed into Spanish law, without prior consultations with civil society, without a parliamentary debate, and without a subsequent effort to disseminate information about the Directives to relevant circles.

The Advisory Committee notes with regret that, three years after the adoption of the law transposing the Directives, the Council on Equal Treatment envisaged in the law has still not been set up. Precise information regarding the competences, budget and staff of the envisaged Council, which will determine the latter’s independence, is still not available as the draft Royal Decree regulating these issues has still not been adopted. According to information received by the Advisory Committee, it is intended to locate the Council within the Directorate General for the Integration of Immigrants of the Ministry of Labour and Social Affairs. If this is the case, it will be important to ensure its independence.

The Advisory Committee also notes that the Council will operate at the national level, without regional branches, despite the highly decentralised nature of Spain’s internal organisation.

Recommendations

The Advisory Committee urges the authorities to redouble efforts to raise awareness about the problem of discrimination and of available remedies both among the general public and within key circles (police, media, prosecuting authorities, judges).

The Council on Equal Treatment should be established without further delay and care should be taken to ensure that the Council’s competences and resources are sufficient to ensure its independence and its capacity to provide adequate assistance to persons who have been victims of discrimination.

Efforts to ensure full and effective equality in respect of Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee found that considerable socio-economic differences remained between a large number of Roma and the rest of the population, in spite of efforts made under the Government Roma Development Plan. Noting that cases of discrimination were recorded in various sectors, the Advisory Committee called on the authorities to take more determined action to remedy this state of affairs.

Present situation

a). Positive developments

Since its inception in 1989, the Government Roma Development Plan has continued to guarantee a steady, if limited, supply of funds for remedying the often severe socio-economic difficulties faced by many Roma. As the only Government programme at the national level designed specifically to improve the social integration of Roma (all other programmes aim to promote the social and economic integration of other vulnerable groups as well, including women, immigrants, the disabled and the unemployed), the Roma Development Plan has helped to ensure that Roma issues remain visible and are mainstreamed in the activities of key Ministries. The Roma Development Plan has also encouraged Autonomous Communities and Municipalities to devote attention to Roma issues, by involving regional and local governments directly in the design and operation of the projects that it has financed.

Andalusia has been the most active Autonomous Community in this regard, developing a wide range of programmes for Roma under its own ‘Integrated Plan for the Roma Community’, initiated in December 1996. Andalusia’s pro-activeness is reflected in its receiving the largest share of State funding under the Roma Development Plan, although the bulk of Andalusia’s ‘Integrated Plan for the Roma Community’ is financed through its own regional budget.

The Advisory Committee notes with satisfaction that Spain has also used European Union funds to strengthen efforts to ensure full and effective equality in respect of Roma, particularly in the field of employment, where large-scale vocational training and job insertion programmes for persons who are in a situation or under risk of exclusion, including Roma, have been implemented.

The Advisory Committee is pleased to note that Roma women, who continue to face particular problems entering the labour market, have made considerable advances in recent years. Progress has been achieved, above all, through the efforts of Roma women themselves, as the emergence of numerous highly active associations of Roma women, particularly in Andalusia, indicates. The Advisory Committee welcomes the support that these women have received from the Government of Andalusia, in particular the Department for Equality and Social Inclusion, including the development of a special vocational training programme for Roma women, *Eurorromi*.

Steps have also been taken in recent years to improve Roma access to housing. At the regional level, which is where most competences lie in this field, public authorities in Andalusia and Madrid have abandoned the ill-devised practices of the past that relocated the inhabitants of informal settlements into “special neighbourhoods” (*barrios de tipología especial*) on the peripheries of cities. Intended as provisional housing, these sites have in many cases ended up becoming permanent and substandard “ghettos” inhabited largely but not exclusively by Roma. The Advisory Committee welcomes in particular the efforts made by the Instituto de Realojamiento e Integración Social (IRIS) of the Community of Madrid and its staff, to dismantle informal settlements and “special neighbourhoods” and provide their inhabitants with new, publicly-subsidised housing in ordinary neighbourhoods. The Advisory Committee also notes that the Andalusian Ombudsperson has played a significant role in promoting new housing developments for Roma.

The Advisory Committee notes with interest that a new State Housing Plan, covering the period 2005-2008, has been adopted by the Spanish Government, which aims to facilitate citizens' access to housing. Although it does not specifically mention Roma, it identifies 'persons at risk or in a situation of social exclusion' as requiring particular assistance and calls for an increase in the construction of publicly-subsidised housing. According to information provided by the authorities, progress implementing the new State Housing Plan is well underway in most Autonomous Communities.

The Advisory Committee welcomes the increased attention of Spanish authorities to the inequalities which Roma continue to face in the field of health, in spite of the fact that public health care in Spain is free-of-charge. A number of positive initiatives have been developed, including the award-winning Navarre Community Health Programme for Roma, which trains mediators to assist the 7,000 Roma living in Navarre to communicate with public health officials. The Ministry of Health and Consumption has signed an agreement with the non-governmental organisation Fundación Secretariado Gitano, enabling the latter to train health mediators in other Autonomous Communities. In 2006, the same Ministry established a special budgetary line to support programmes initiated by municipalities aimed at making health services more accessible to Roma and other vulnerable groups.

b) Outstanding issues

Shortcomings in the design and operation of the Roma Development Plan, some of which had already been identified by the Advisory Committee during the first monitoring cycle, continue to undermine its achievements. The Advisory Committee is concerned, firstly, by the limited size of the budget allocated to the Roma Development Plan (approximately 3 million euros per annum), which has remained the same since the Plan's inception in 1989. The funds made available under the Plan, moreover, can only be used to cover projects initiated by Autonomous Communities or Municipalities (who are obliged to match two-thirds of any funding they receive), resulting in considerable variation in the Plan's impact across regions.

According to the information received from key NGOs working on Roma issues, the Plan's limited budget creates only a weak incentive for regional and local authorities to propose projects; and many of the projects proposed tend to be discontinued and ineffective. The Development Plan's lack of strategic vision also continues to be criticised by NGOs, who note that the absence of clear goals makes the Plan difficult to evaluate and has meant that its targets tend to be decided according to the needs and interests of regional and local authorities, often with only limited Roma involvement (see comments under Article 15 below). This lack of strategic vision has resulted in the neglect of certain key issues in the programmes implemented under the plan, above all, the issue of the maintenance and development of Roma culture (see also comments under Article 5).

Even in the field of employment, the area which has received the most attention, large numbers of Roma still face particular difficulties. According to estimates provided by non-governmental organisations, substantial numbers of Roma do not have salaried jobs, work on a temporary basis and depend on the informal economy, with no social protection. Existing vocational training and job insertion programmes are not, it seems, having an adequate impact. Some of the reasons brought to the Advisory Committee's attention include the low level of education of Roma participating in these programmes (see also comments under Article 12), which means that they still have difficulties competing with non-Roma on the labour market; the fact the programmes tend to train participants for low-level jobs which do not ensure stability in employment; and the presence of discriminatory attitudes among employers.

Advances made by Roma women in gaining access to training and employment, particularly in Andalusia, still characterise only a minority, as Roma women throughout Spain continue to be particularly vulnerable to discrimination on the basis of gender as well as ethnicity and socio-economic status.

Notwithstanding the pioneer actions taken in a number of regions to improve access to housing for Roma, estimates provided by the Spanish authorities indicate that considerable numbers

continue to live in segregated and sub-standard accommodation. According to reports produced by the Galician and Andalusian Ombudspersons, the main factors contributing to this situation are the soaring costs of property, the insufficient availability of publicly-subsidised housing, and widespread discriminatory attitudes among property owners who refuse to sell or rent out apartments to Roma. According to the Galician Ombudsperson, many Roma families also face difficulties fulfilling some of the legal requirements for obtaining access to publicly-subsidised housing, including the requirement to submit social security and tax payment receipts in order to demonstrate a family's income level.

There are still incidents of evictions of Roma living in informal settlements. These incidents, frequently related to urban re-planning schemes, have in some cases resulted in the displacement of Roma families without the offer of appropriate alternative accommodation. The Advisory Committee is also concerned about the situation of Roma living in informal settlements identified for removal by public authorities, who cannot benefit from the re-housing schemes offered to other residents due to their arrival on the affected sites after the cut-off dates established by the authorities. While recognising the limits on the ability of public authorities to provide alternative housing for large numbers of people, the Advisory Committee is concerned that steps need to be taken at a State level to provide appropriate alternative accommodation for Roma who may become homeless following the closure of informal settlements.

Whilst commending the Ministry of Housing's objective of increasing the construction of publicly-subsidised housing, the Advisory Committee notes that one of the requests formulated by non-governmental organisations – to include the eradication of segregated and substandard informal settlements among the objectives of the State Housing Plan – has not been accommodated. Since housing is an area where regulatory competences are decentralised, the Advisory Committee notes that the practical implementation of this law requires the adoption of specific housing programmes at regional and local level.

The health situation of many Roma continues to be problematic. It is estimated that Roma have a life expectancy that is ten years lower than the average person. High unemployment and other socio-economic difficulties impact directly on their health situation. Moreover, few clinics and hospitals are equipped to meet the particular needs of Roma: intercultural mediators are rarely present; health-care professionals are rarely trained on Roma culture; hospital regulations are not able to accommodate certain Roma cultural features, such as the active involvement of the extended family.

According to information received by the Advisory Committee, the proportion of Roma among women prisoners is disconcertingly high, although the Government does not have reliable data on this issue (see also section on data collection below). Reports also indicate that Roma are affected by disproportionate stops and checks by law-enforcement officials (see also comments under Article 6).

Recommendations

The authorities should, as a priority, seek further resources to support specific programmes aimed at ensuring effective equality in respect of Roma, especially Roma women, in their access to employment, housing, health care and other social services, while continuing to promote full enjoyment by Roma of mainstream programmes in these fields. The behaviour of employers, landlords, health providers and professionals in the criminal justice system should be monitored and those responsible for discriminatory practices must be brought to justice.

The authorities should investigate whether the practice of relocating the inhabitants of informal settlements in "special neighbourhoods" continues in any part of Spain and, if so, remedial measures should be adopted immediately.

In the case of lawful evictions, public authorities should organise prior consultations with the community or individuals concerned in order to reach solutions that are acceptable to all the parties, including through the offer of appropriate alternative accommodation, in accordance

with the Committee of Ministers' Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe.

Efforts should be made to remedy the shortcomings identified in the current Roma Development Plan during the process of drafting the second Plan currently in preparation. This should be accomplished, *inter alia*, by involving Roma in the design, implementation and monitoring of the relevant programmes, by ensuring adequate funding at the State and regional levels, and by organising regular independent evaluations.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee took note of the view of the Spanish authorities that Spanish legislation does not allow for the gathering of information on individuals' ethnic origin. Pointing out that the lack of reliable statistical data on the various population groups may hinder efforts to ensure full and effective equality, the Advisory Committee urged the authorities to identify means of obtaining such data, while ensuring the necessary safeguards are in place for protecting personal data.

Present situation

a) Positive developments

The Advisory Committee was pleased to note, in the exchanges it maintained with representatives of Spain's key Ministries, that there is widespread awareness of the importance of obtaining information about the situation of ethnic groups in order to ensure the adequate design and implementation of measures for combating discrimination. The same awareness was expressed by representatives of the regional authorities whom the Advisory Committee met in Andalusia and Madrid. The Advisory Committee notes that Spanish legislation allows for the gathering and processing of data on ethnicity in certain circumstances, with the previous and informed consent of the individuals concerned. Whilst data on ethnicity has never been collected in Spain in the context of a government census, the Advisory Committee is pleased to note that methods of obtaining information about the situation of ethnic groups are gradually being devised and implemented.

Spain's Ministry of Housing and Ministry of Health and Consumption have both recently embarked on projects, in cooperation with non-governmental actors, aimed at conducting large-scale surveys of the housing and health situation of Roma in 2007. In the field of employment, the design and implementation of vocational training and job insertion programmes throughout Spain has been assisted by survey data, analysed in terms of age, sex and geographical distribution, collected on an annual basis from the programmes' participants by the non-governmental organisation Fundación Secretariado Gitano that is largely funded by governmental and European Union grants.

b) Outstanding issues

Whilst commending the efforts that Spanish authorities are making to collect information about the situation and needs of Roma in the areas of health, housing and employment, the Advisory Committee notes there are still important areas where no data on ethnicity exists at all. The criminal justice system, where Roma are reported to be affected by discrimination, is one such area.

The Advisory Committee also notes that the methods currently used to collect such data, based on surveys, are useful for providing approximations of the types of problems facing Roma; however, the surveys conducted so far are not comprehensive and do not provide the type of detailed, reliable data that is needed in order to diagnose problems at local level and provide appropriate solutions. This type of systematic data collection is particularly important in view of the decentralisation of many key minority-relevant competences in Spain (which means that the

problems Roma face may vary from region to region), and in view of the heterogeneity which characterises the Roma community.

Recommendations

The Advisory Committee urges the Spanish authorities to pursue further their efforts to collect data on the situation of ethnic groups in all relevant spheres, including the criminal justice system. Care should be taken to ensure that the collection, processing and dissemination of this data, which should be as comprehensive as possible, respect, at all times, the safeguards contained in the Committee of Ministers' Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

34. Sweden

Opinion adopted on 8 November 2007

Non-discrimination legislation

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the scope of normative guarantees against discrimination was limited, and it called on the authorities to address the issue.

Present situation

a) Positive developments

Sweden has taken a number of steps to strengthen its legislation against discrimination on ethnic origin and other grounds. It has, for example, introduced new guarantees through the Prohibition of Discrimination Act (2003:307), which aims to contribute to the transposition of the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

b) Outstanding issues

Despite improvements, there remains scope to extend, clarify, coordinate and strengthen anti-discrimination legislation further. Important proposals on how to achieve this aim were put forth in the final report of the Parliamentary Anti-Discrimination Committee in 2006. The Committee envisages wider legislative guarantees against discrimination, *inter alia*, in the provision of services, including services provided by private actors (see also related comments regarding positive measures below).

Recommendation

Sweden should continue to take measures to widen the scope of legislative guarantees against discrimination on ethnic and other pertinent grounds, including by following-up on the recommendations issued by the Parliamentary Anti-Discrimination Committee.

Monitoring of ethnic discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee concluded that the authorities should increase their efforts to monitor and address cases of discrimination against persons belonging to national minorities, including Roma women.

Present situation

a) Positive developments

Sweden has continued to express its commitment to combat discrimination and increase its support for such key institutions as the Office of the Ombudsman against Ethnic Discrimination.

The establishment of the Ministry of Integration and Gender Equality is a valuable attempt to streamline policies and responsibilities in combating discrimination. Moreover, there are signs that the on-going efforts to tackle discrimination are producing some positive results in certain fields, including in access to restaurants and other premises, where incidents of ethnic discrimination have been frequent.

The Advisory Committee is pleased to note that discrimination against Roma has been given increased attention. The report of a two-year project by the Office of the Ombudsman against Ethnic Discrimination, contains a range of valuable proposals on how to counter discrimination against Roma. These proposals merit careful follow-up by the authorities. Another noteworthy initiative is the working group, comprising Roma women and Government officials, set up to address concerns of Roma women and girls.

The Advisory Committee strongly welcomes the in-depth work, commissioned by the Government, related to structural discrimination in Sweden. The resulting reports provide a critical evaluation of the present discrimination situation and important observations and recommendations, a number of which are also of relevance for national minorities. Some of the recommendations have been endorsed by the authorities, albeit only partially. For example, the proposal to require national authorities to draw up action plans against discrimination is to an extent reflected in the national action plan for human rights for 2006-2009, according to which certain government agencies are to produce anti-discrimination strategies.

b) Outstanding issues

Persons belonging to national minorities continue to face discrimination in a number of fields. It is widely acknowledged that discrimination often goes unreported due to the limited confidence of some victims, notably Roma, in the remedies available or because of their insufficient awareness of these remedies. There are also concerns that the current mechanisms to address discrimination cases e.g. in the field of employment are not sufficiently effective.

Sweden is currently considering consolidating its Ombudsman structure by instituting one Anti-Discrimination Ombudsman instead of the current four, dealing respectively with Equal opportunities, Sexual orientation, Disability and Ethnic discrimination. This is one of the proposals contained in the report of the Parliamentary Anti-Discrimination Committee. It is important to ensure that this proposal, which can improve impact and visibility of the work of various ombudsman institutions, is pursued in a manner that ensures continuation of the significant work that the Office of the Ombudsman against Ethnic Discrimination has carried out. The importance of the protection of national minorities is also to be borne in mind in the reform process, and in this respect an increased presence of the Ombudsman in the areas inhabited by national minorities, particularly in northern Sweden, should be considered. While not addressed in the report of the Parliamentary Anti-Discrimination Committee, the Advisory Committee further notes the potential role of the resulting Ombudsman institution as a contributor to the domestic implementation and monitoring of the Framework Convention. This needs to be considered in the on-going discussions.

Sweden decided in 2007 to close down its Integration Board, citing efficiency reasons. There is a need to ensure that important initiatives launched or administered by the Board, such as anti-discrimination bureaux, are not undermined by this decision. While the Board did not deal with national minorities *per se*, its closing has, at least temporarily, added to the continuing institutional instability that has characterised public policies on minorities in Sweden. Another recent decision adversely affecting anti-discrimination work was the Government's decision to stop funding the Centre against Racism, which was set up in 2004 with the support of the Government.

Recommendation

Sweden should ensure that the planned reform of the Ombudsman structures dealing with discrimination results in a system that pays close attention to the needs of persons belonging to national minorities, and is accessible to them. The authorities should ensure that the decision to

close down the Integration Board and other institutional changes do not undermine the continuation of the work carried out by anti-discrimination bureaux or other important initiatives in this sphere. It is crucial that they do not diminish the public support for anti-discrimination work in general.

Positive measures, including measures in employment

Findings of the first cycle

In its first Opinion, the Advisory Committee called for additional positive measures to promote effective equality and for the expansion of the implementation of the relevant norms in the field of employment.

Present situation

a) Positive developments

The question of positive measures on the grounds of ethnic origin in working life receives attention in the report of the Parliamentary Anti-Discrimination Committee and the need for such measures is also highlighted in the report on discrimination of Roma by the Office of the Ombudsman against Discrimination. There are also some positive examples of attempts to promote ethnic diversity in working life in accordance with Article 4 of the Act on Measures to Counteract Discrimination in Working Life.

b) Outstanding issues

Measures envisaged to promote ethnic diversity under the above-mentioned Act need to be expanded further, bearing in mind that many employers do not have or do not implement diversity plans while persons belonging to national minorities continue to report problems in their access to employment. While recent comprehensive studies showing that discrimination in employment has mostly affected more recent minority groups, it appears that amongst national minorities at least Roma are also facing practices of discrimination.

While in the field of employment, positive measures are to an extent envisaged in the pertinent legislation, in other fields the present legislation does not explicitly accommodate, let alone oblige, the introduction of positive measures. The above-mentioned report on Roma of the Office of the Ombudsman against Discrimination even concludes that “temporary special measures for an ethnic group, such as Romanies, cannot be considered to be permitted in Sweden at present”. This position raises issues as it does not seem to adequately reflect Article 4, paragraph 2 of the Framework Convention.

The Advisory Committee considers that a categorical exclusion of positive measures would be problematic from the perspective of the Framework Convention. The Advisory Committee is aware that positive measures may give rise to a number of concerns and that such measures are sometimes understood exclusively in terms of quotas. The use of quotas is in fact practiced in certain States. The Advisory Committee would like to highlight that while quotas are one form of positive measures, they do not cover the whole spectrum of measures that could be taken to redress a situation of inequality. In this respect, the Advisory Committee recalls that adequate measures are explicitly foreseen in Article 4, paragraph 2, of the Framework Convention. This Article provides that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt adequate measures that take into account the specific conditions of the persons concerned. The Advisory Committee would like to emphasize that such measures need to be proportional and adequate i.e. that they should not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

Recommendation

While pursuing further special measures in the field of employment, Sweden should ensure that its legislation in other relevant fields also accommodates, and, where necessary, provides for positive measures aimed to achieve full and effective equality. This should be borne in mind

also in the drafting of new anti-discrimination legislation and, as far as necessary, in the constitutional reform.

35. Switzerland

Opinion adopted on 29 February 2008

Legislative developments in the field of discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the Swiss authorities to adopt a fuller legislation covering discrimination and to collect statistical data on discrimination more systematically.

Present situation

a) Positive developments

The Federal authorities have continued to complement sectoral legislation with non-discrimination clauses where they deemed it appropriate. The monitoring of the implementation of Article 261bis of the Criminal Code, which prohibits “racial discrimination”, has been pursued. Detailed and public statistics are easily available through a database which is regularly updated by the Federal Commission against Racism.

b) Outstanding issues

Bearing in mind that the authorities do not intend to develop a comprehensive anti-discrimination law and although there are isolated anti-discrimination provisions, the Advisory Committee regrets that a lack of specific provisions against discrimination persists in certain key fields, such as housing, employment, access to public places and the provision of services.

With the exception of criminal provisions, official statistics and research on the frequency of discriminatory acts in practice remain scarce. Additional data, broken down by age and sex is needed in this field, as well as in the field of education and representation in the civil service, to help the authorities design positive measures for persons belonging to minorities (see related comments under Article 14 and 15, below).

There is sufficient reason for expressing concern about ongoing discussion to consider abolishing Article 261bis of the Criminal Code or amending this provision with a view to weakening it on the alleged grounds that its application raises practical problems and may sometimes be difficult to reconcile with freedom of expression.

Recommendation

The authorities should continue to combat racial discrimination firmly through adequate criminal provisions and develop further anti-discrimination legislation in key fields such as housing, employment, access to public places and the provision of services. Switzerland should also introduce enhanced methods of monitoring developments in these fields.

Institutional framework to combat discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted with satisfaction the positive role played by the Federal Commission against Racism and the creation of a Service for Combating Racism. It urged the authorities to give all necessary support to those bodies and to consider with due attention their proposals in order to step up efforts to fight against racism and intolerance.

Present situation

a) Positive developments

The Federal Commission against Racism has continued to publish and support valuable research, studies and written submissions on a variety of topics. These include the planned reform of the naturalisation process, amendments to asylum legislation, the ongoing debate on Article 261bis of the Criminal Code, media coverage of foreigners and ethnic minorities during the 2007 electoral campaign, and the situation of Travellers. A Travellers' representative has been appointed as a member of the Federal Commission against Racism.

Parliamentary proposals have been made since 2004 to consider the setting up of an independent human rights institution at the Federal level and the Government is currently exploring ways and means to develop this proposal.

b) Outstanding issues

Despite its unique role and important contribution to the fight against racial discrimination and various forms of intolerance, the maintenance of the Federal Commission against Racism is regularly questioned, including in Parliament. As from January 2008, the Government reformed the Federal Commission against Racism and its membership has been reduced from 19 to 15 members. This reduction has been criticised in that it is likely to reduce significantly NGO representation and religious diversity within the Commission. Furthermore, the overall budget of the Commission has been reduced from CHF 176,000.- in 2007 to CHF 155,000.- in 2008, a regrettable development which is likely to result in the weakening of the operational capacity of this institution.

In February 2004 the Parliament decided to discontinue plans for a Federal Bill on the introduction of an Ombudsman Office, especially in view of the financial implications of such an institution.

Recommendation

Switzerland should reconsider the trend to weaken existing institutions and instruments promoting human rights and the fight against racial discrimination. Resolute efforts should rather be made to strengthen them, which may include the creation of an independent human rights institution.

Situation in terms of discrimination and equality

Findings of the first cycle

In its first Opinion, the Advisory Committee noted with satisfaction the existence of a range of positive measures which aimed to promote full and effective equality, especially in favour of Italian- and Romanche-speakers in fields such as language, culture and media. It expressed deep concern about the indirect discrimination affecting Travellers in land-use planning, regulation of constructions and regulation of trade and called for additional measures in these fields.

Present situation

a) Positive developments

The situation in respect of persons belonging to linguistic minorities has remained unchanged and no instances of discrimination have been reported against these persons. A number of positive measures are in place and could be developed and further supported by the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities.

The Advisory Committee welcomes the publication, in October 2006, of a comprehensive report prepared by the Government on the situation of Travellers in Switzerland. This report, which was submitted to Parliament for consideration, consists of a detailed review of the current situation of Travellers in Switzerland and the various forms of discrimination they face and includes national measures to combat discrimination and improve Travellers' living conditions.

b) Outstanding issues

Travellers continue to face numerous instances of discrimination in practice, especially in relation to the legal and administrative obstacles preventing them from stopping their mobile homes to practice their itinerant way of life. Despite remedial measures proposed in the governmental report of 2006, no significant improvement has been noted yet.

Recommendation

More resolute action should be taken to develop positive measures to address persisting problems of discrimination faced by Travellers, especially the housing conditions related to their itinerant way of life.

36. “The former Yugoslav Republic of Macedonia”

Opinion adopted on 23 February 2007

Legal and institutional framework for combating discrimination*Findings of the first cycle*

In its first Opinion, the Advisory Committee found shortcomings in the legal framework offering protection against discrimination and urged the authorities to extend the scope of legal non-discrimination provisions. In addition, the authorities were urged to step up their efforts to provide adequate recognition and support for the Ombudsman’s work.

Present situation

a). Positive developments

The Advisory Committee welcomes the fact that the Ombudsman is now an established feature of the country’s institutional landscape and that information and awareness campaigns have been organised, including by the Ombudsman’s local branches, to familiarise the public and the civil service with this institution. It further notes that information and awareness material is also distributed in the languages of the national minorities and these languages can be used when applying to the Ombudsman.

The Advisory Committee notes that the Ombudsman is *inter alia* in charge of monitoring the implementation of the principles of non-discrimination and equitable representation of ethnic communities in public bodies, as well as the application, since its entry into force in 2006, of the Gender Equality Act. However, according to information provided by the Ombudsman’s Office, the Ombudsman has received very few complaints about ethnic discrimination from persons belonging to national minorities.

b). Outstanding issues

The Advisory Committee has taken note of the differing views expressed during its visit to “the former Yugoslav Republic of Macedonia” concerning the need for a special anti-discrimination law, which representatives of some state bodies thought unnecessary. It nevertheless noted that, although Article 9 of the Constitution provided a general safeguard against discrimination, existing legislation laid down no specific penalties for its infringement.

Similarly, as stated by various sources, areas such as housing, health care and access to public services are not covered by specific anti-discrimination legislation, and existing anti-discrimination provisions are often vague, fail to specify the consequences in case of violations, are rarely invoked in court, and some of them stipulate undue citizenship requirements. It has also been pointed out that Article 319 of the Criminal Code, which criminalises incitement to national or religious hatred, discord and intolerance (without, however, providing specific protection against racial or ethnic discrimination), is very rarely, if ever, invoked by the courts.

According to non-governmental sources, this situation, as well as the very small number of complaints to the Ombudsman about ethnic discrimination, could reflect the public’s lack of

confidence in the existing human rights protection institutions, including the Ombudsman institution, as well as in the legal remedies available. The Advisory Committee notes however that cases of discrimination against persons belonging to national minorities, in particular against Roma, Albanians and Turks, continue to be reported.

It is therefore important to ensure that the awareness campaigns have reached all potential complainants and that the public is sufficiently familiar with the principle of non-discrimination and relevant legal standards. Whilst welcoming the efforts already made in this field, the Advisory Committee notes that they are often carried out by NGOs with limited capacities and resources that frequently operate on the basis of projects dependent on international financial support.

Recommendations

The authorities should examine existing anti-discrimination provisions and take the necessary legislative steps, including, as appropriate, through the adoption of comprehensive anti-discrimination legislation. This is to ensure that domestic legislation provides adequate safeguards against ethnic discrimination in all fields and makes effective remedies available to potential victims.

More determined efforts should be made to raise public awareness of human rights and of action to combat discrimination, including involving and supporting NGOs active in this field in order to increase their capabilities. The Ombudsman's work in this respect should be supported further. Adequate measures are also needed in order to obtain up-to-date information on cases of discrimination against persons belonging to national minorities, as well as to combat and punish such manifestations.

Full and effective equality. The situation of the Roma

Findings of the first cycle

In its first Opinion, the Advisory Committee noted discriminatory practices against the Roma in most fields and called on the authorities to take appropriate steps to remedy the situation. It further invited the authorities to introduce a national strategy for the Roma, with adequate funding, in order to reduce the socio-economic gap between the Roma and the rest of the population.

The Advisory Committee also took note of the problems faced by certain persons belonging to national minorities, in particular the Albanians and the Roma, in acquiring citizenship of the country, with adverse consequences in terms of access to social, political and economic rights. The authorities were invited to devote the requisite attention to the problems facing these persons in the naturalisation procedure.

Present situation

a). Positive developments

The Advisory Committee notes with satisfaction that, since its first Opinion, a National Strategy for the Roma has been drawn up in cooperation with the latter, which, after being thrown open to public debate, was adopted by the Government in January 2005. At the same time, a National Action Plan has been adopted to implement this strategy in four priority areas: employment, housing, education and health. Awareness-raising activities have been organised to encourage the relevant local authorities to adopt local action plans in their turn and to earmark special funds in local budgets for this purpose. Provision has also been made for these funds to be supplemented on the basis of projects to be submitted, by sector, to the relevant ministries. Moreover, the authorities are actively involved in the Decade of Roma Inclusion (2005-2015), an initiative launched by eight countries in Central and South-East Europe, aiming to provide a framework for action by governments in order to accelerate social inclusion and improve the economic and social status of Roma across the region.

According to representatives of the Ministry of Labour and Social Policy, the evaluation of the first year (2006) of implementation of the strategy and national action plan has shown encouraging results, especially in the fields of education and employment. As regards employment, there have been active measures to help Roma acquire qualifications as well as a drive to provide information and training on starting small family businesses, together with efforts to encourage employers to recruit Roma. Also, various measures have been taken in order to facilitate Roma access to health and social rights (see State Report for further details).

b). Outstanding issues

Whilst welcoming the efforts made by the Government over the past few years, the Advisory Committee is still concerned about the persisting gap separating the Roma from the rest of the population and the problems they are facing in almost every field. Owing to the lack of adequate resources and necessary political will at all levels, delays and serious shortcomings have been reported in implementing the national strategy and action plan for the Roma, and the main targets are not always benefiting from the measures adopted. The Advisory Committee notes that, while funds have been allocated by the various ministries concerned, a large part of the resources mobilised comes from international donations, which creates problems in terms of continuity.

The Advisory Committee notes with concern reports that 70% of the Roma population are living on illegal sites with the constant threat of eviction and where basic services and infrastructure such as water, electricity and access roads are frequently lacking. Similarly, while the employment problem is general and affects all communities, whether majority or minority, the Roma are the worst affected, with approximately 70% currently out of formal employment. With a generally low level of educational attainment (only primary school for many of them) and qualification, as well as discrimination in the labour market, many Roma have little chance of finding jobs.

Some of their representatives claim that the Roma are systematically excluded from job-centre databases; the reason given by some of these employment agencies appears to be the lack of a full primary education, which is apparently a basic requirement for access to the labour market and to social benefits. According to the authorities, however, this is not a requirement for inclusion in the databases in question and such an interpretation of current rules in this field is unjustified. The Advisory Committee has been informed that the Ministry of Labour and Social Policy has issued directives providing the necessary clarification on this matter. Roma NGOs also point out that, while employment programmes and projects have been implemented by the Government for several years with the support of international institutions, the Roma are often excluded from them inasmuch as they are unable to meet the basic educational requirements for participating. Their precarious situation clearly calls for priority and targeted action by the Government.

Serious problems are still being reported concerning Roma access to social assistance and health care, where hostile attitudes and discriminatory practices – such as denial of treatment and segregation in hospitals – are frequently reported. Most Roma have no access to basic medicines and treatment and are not in a position to pay the charges, albeit minimal, for medicines and visits to the doctor.

The situation of Roma women is particularly worrying. In addition to the problems they face in fields such as education, employment and health, Roma women are often confronted with discrimination outside and inside the Roma community. The Advisory Committee notes that, in order to improve their condition, specific projects have been launched in different sectors. Awareness-raising activities have been conducted on issues related to education, health and reproductive rights, having as targets, in addition to Roma women, the public institutions concerned. Notwithstanding these positive steps, more sustained and more targeted efforts are needed to ensure that the measures taken have a real impact on the situation of the persons concerned.

The problems in obtaining access to education, hostile attitudes and practices of separation facing the Roma remain a challenge for the authorities, although substantive efforts have been made and progress has been recorded in this field (in this connection see the comments on Article 12 below).

Although several hundred Roma have received support (including financial support) to help them obtain identity documents, a significant number of them still do not have birth certificates or identity documents. They constitute a large proportion of those still unable to acquire citizenship of the country, despite legislative amendments designed specifically to make it easier for them. Persons belonging to the Albanian community are also concerned by this problem. The Advisory Committee is concerned by this situation, bearing in mind also that, according to the Government's revised declaration, the scope of application of the Framework Convention is limited to those with the citizenship of the country (see also observations under Article 3 above).

However, the Roma are not the only community affected by socio-economic difficulties. According to their representatives, many Turks are confronted with serious socio-economic problems, especially in the employment field, together with discriminatory practices and problems of access to education in certain regions. Housing problems are also continuing to have an impact on persons belonging to this community, particularly in rural areas.

The difficulties faced by many women belonging to ethnic communities other than the Roma (Albanian and Turkish in particular) in education, employment and health, make these women more vulnerable to discrimination. It appears indeed that these women are often subject to difficulties and multiple discrimination, in their community as well as in society. The Advisory Committee notes that their situation is increasingly becoming a priority for government action, in cooperation with NGOs, and it welcomes the fact that the women themselves are mobilising to address their problems and to increase their participation in society (in this respect, also see the comments under Article 15 below).

Recommendations

The authorities should, in close cooperation with the Roma, step up their efforts to ensure full and effective implementation of the National Strategy for the Roma and the Action Plan adopted by the Government. Regular independent evaluations of the Strategy's implementation should be conducted and appropriate steps urgently taken to combat discrimination against the Roma in all fields. In particular, any undue requirements for registration with the employment agencies should be eliminated. They should go further in making it easier to obtain identity documents and in assisting the Roma, as well as other persons concerned, to acquire citizenship.

Similarly, stronger measures are needed to deal with the socio-economic problems facing persons belonging to other communities, especially the Turks.

The authorities should respond with targeted measures to raise awareness and provide assistance in the relevant fields, to improve the situation of women belonging to different ethnic communities. In particular, the difficulties faced by Roma women in access to employment, health care and education require urgent action. Appropriate resources should be allocated in order to ensure the effective implementation of the Gender Equality Act, also for the benefit of persons belonging to national minorities.

37. Ukraine

Opinion adopted on 30 May 2008

Protection against discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that Ukraine had not developed detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in various

fields. It considered that such legislation should be developed by the Ukrainian authorities in order to protect individuals from discrimination by both public and private entities in a comprehensive manner.

Moreover, the authorities were not in a position to provide information on the number and nature of cases relating to discrimination. The Advisory Committee stressed that, in such circumstances, it was impossible to evaluate the effectiveness of the mechanisms working in the field of discrimination and recommended that the monitoring of developments in this field should be intensified.

Present situation

a) Positive developments

The Advisory Committee welcomes the ratification by Ukraine of Protocol N°12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 1 July 2006.

b) Outstanding issues

To date, no consistent efforts have been made to develop detailed and comprehensive civil and/or administrative legislation pertaining to discrimination. Moreover, there is a lack of clarity in the existing laws as regards certain terms relating to discrimination. For example, there is no civil or administrative definition of direct and indirect discrimination. The absence of such a definition of these terms may put into question the effectiveness of the legal protection provided by these provisions.

In spite of information received by the Advisory Committee concerning discrimination experienced by persons belonging to certain national minorities, there appears to be no collection of statistical data on the number and nature of cases of discrimination in various fields. The only data provided to the Advisory Committee concerns the number of complaints lodged with the Ombudsman Office by persons belonging to national minorities. The Advisory Committee takes the view that, in the absence of such data, it is difficult to evaluate the effectiveness of the existing mechanisms and devise adequate measures to tackle the causes of discrimination.

Recommendations

The Advisory Committee urges the authorities to develop comprehensive civil and administrative legislation and provide effective remedies against discrimination by public and private entities. Definitions of discrimination which include *inter alia* direct and indirect forms of discrimination should be incorporated in this anti-discrimination legislation.

The Advisory Committee considers that official data on complaints regarding discrimination, including cases of discrimination registered in courts, should be collected on a regular basis to facilitate the evaluation of the effectiveness of the legislative and institutional mechanisms put in place.

Efforts to ensure full and effective equality in respect of disadvantaged groups

Findings of the first cycle

In its first opinion, the Advisory Committee noted that the general anti-discrimination provisions contained in the Constitution of Ukraine which prescribe that no privileges should be given on the grounds of ethnic origin, had been used in public discussions as an argument against the introduction of special measures for the benefit of some persons belonging to national minorities.

The Advisory Committee also noted the particular difficulties experienced in ensuring full and effective equality with respect to Crimean Tatars and Roma, who were facing social and economic difficulties. The Ukrainian authorities were requested to give increased attention to the situation of persons belonging to these groups.

Present situation

a) Positive developments

The Advisory Committee welcomes the commitment undertaken by the Odessa and Uzhgorod authorities to implement the 2003 – 2006 programmes for improving the situation of the Roma in various fields, such as health care and education. Moreover, a Social Programme for the Crimean Tatars is being implemented in Crimea (see also remarks under Article 15).

The Advisory Committee welcomes the efforts made by the Ukrainian authorities to remove undue obstacles which had prevented the Crimean Tatars and other formerly deported peoples from obtaining Ukrainian citizenship. Since 2004, approximately three thousand Crimean Tatars have received Ukrainian citizenship every year. This has led to a considerable reduction in the number of stateless persons, as required by the European Convention on Nationality ratified by Ukraine in December 2006.

b) Outstanding issues

The Advisory Committee regrets that Article 24 of the Constitution providing for no privileges based on ethnic origin, has continued to be used by several authorities, such as the Ministry of Labour and Social Affairs, as an argument against the introduction of special measures (also called ‘positive action’) for the benefit of persons belonging to national minorities aimed at promoting full and effective equality. The Advisory Committee reiterates that such measures must not be considered to be an act of discrimination as stipulated in Article 4, paragraph 3, of the Framework Convention. On the contrary, special measures are a means to achieve full and effective equality for persons belonging to the most disadvantaged minority groups, such as Crimean Tatars and Roma. The ongoing constitutional reform should therefore be used as an opportunity to entrench the concept of special measures as a means to realise full and effective equality.

The Advisory Committee has received disconcerting information about difficulties faced by Roma in obtaining official documents, such as birth certificates and other identity documents, which may hamper their access to social and health services, as well as to the labour market. Complex bureaucratic requirements, high registration fees, discriminatory behaviour towards Roma and corruption among state employees, may be possible reasons why some public officials have reportedly refused to issue such documents. Various instances of discrimination have also been reported in the labour market, mainly against Roma but also against Crimean Tatars. Special care should also be paid to indirect discrimination as it may be one of the reasons behind the turning down of job applications.

Some interlocutors informed the Advisory Committee that persons belonging to national minorities are affected by unjustified and/or unlawful stop and search procedures which are carried out by law-enforcement officials. Roma, as well as persons belonging to visible minorities living in various regions of Ukraine, seem to be particularly targeted by this practice which is allegedly accompanied, in certain cases, by calls for bribes. Raids and home searches in Roma settlements, sometimes accompanied by an excessive use of force, have reportedly not ceased. Cases of ill-treatment by the police are still being reported, and the complaints brought against the officials under suspicion are often not properly investigated. Moreover, there are reports of Roma convicted of crimes and subsequently sentenced to imprisonment, without substantive proof of guilt. By contrast, law-enforcement agencies are reported to be more reluctant to investigate crimes committed against Roma. Widespread negative stereotypes of the Roma population seem to be prevalent also within law-enforcement agencies as well as the judiciary (see also remarks under Article 6, below) and no doubt contribute to the risk of unequal treatment by these institutions.

Recommendations

The Advisory Committee encourages the Ukrainian authorities to consider incorporating norms explicitly allowing special measures in the existing legislation to redress the situation of persons belonging to disadvantaged national minorities and achieve full and effective equality.

The Ukrainian authorities should take more resolute measures to assess, monitor and combat discrimination against persons belonging to disadvantaged minorities in such spheres as employment, access to housing, social and health services.

Efforts to eliminate obstacles faced by the Roma in obtaining identity and other documents should be strengthened with a view to facilitating their access to all social rights. Incidents of corruption among public employees should be addressed and effective, proportional and dissuasive sanctions applied for discriminatory practices.

The Advisory Committee encourages the authorities to reinforce their efforts to provide law-enforcement agencies and the judiciary with the necessary human rights training. The authorities should monitor the behaviour of law-enforcement officials and ensure that any unwarranted and discriminatory acts against persons belonging to national minorities, in particular the Roma, are effectively sanctioned.

Data collection

Present situation

Although ethnic data can be extracted from census databases when the need arises, data on the situation of national minorities in economic, social, cultural and political fields (employment, health, housing, education, minority representation in public authorities etc.) is not systematically collected. In fact, the general census seems to be the only comprehensive data collection even though there is a continuous need for such data. Labour force surveys and household surveys do not include ethnicity. For example, the Ministry of Labour and Social Affairs informed the Advisory Committee that no data on the employment of persons belonging to the Roma minority was available. By contrast, the State Committee on Statistics informed the Advisory Committee that the collection of ethnic data in the aforementioned field could be gathered in Ukraine upon a request from the competent Ministry, at least from within the census results.

The Advisory Committee notes that the lack of statistical data on the situation of the different groups in the aforementioned spheres leads to increased difficulties to elaborate targeted minority policies. The Advisory Committee wishes to emphasise the importance of such data for the preparation, implementation and monitoring of public policies with regard to the protection of minorities and especially disadvantaged groups. Awareness-raising among national minorities of the necessity to collect such data for the elaboration of adequate policies, is also desirable.

The Advisory Committee regrets that despite worrying recent trends, there is still no reliable statistical data on hate and racially motivated crimes perpetrated *inter alia* against persons belonging to national minorities (see also related comments under Article 6, below).

Recommendation

The Advisory Committee calls on the authorities to develop further policies to promote full and effective equality in fields such as employment and health in the light of relevant statistical data on the situation of persons belonging to national minorities. Particular attention should be paid to persons belonging to disadvantaged minorities. The authorities are encouraged to make more frequent use of the services of the State Committee on Statistics of Ukraine to collect such data by including questions on ethnic affiliation in labour force and household surveys. Ethnic data collection should be conducted in close co-operation with national minority representatives and with full respect for the safeguards, notably those related to the protection of personal data, the specific and limited use of such data by the authorities, and the free, informed and unambiguous consent of the persons concerned, as laid down in the Committee of Ministers Recommendation (97) 18 concerning the protection of personal data.

38. United Kingdom

Adopted on 6 June 2007

Legislative and institutional developments in the field of anti-discrimination

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the important legislative innovations introduced by the Race Relations (Amendment) Act 2000, giving public authorities in Great Britain a general duty, as well as a series of special duties, to promote race equality and good race relations. The Advisory Committee regretted, however, that certain provisions under the Act – in particular, the prohibition of discrimination by public authorities in carrying out any of their functions – did not apply to Northern Ireland.

During the first monitoring cycle, the Advisory Committee noted the lack of comprehensive legislation to protect individuals from religious discrimination and considered that this has had an adverse effect on persons belonging to minority ethnic communities. The Advisory Committee called on the Government to examine further the legal measures necessary to deal with this issue.

The Advisory Committee also noted that proposals to set up a new human rights and equality body had raised concerns among certain parties, especially as regards the new body's relationship to existing bodies. The Government was invited to examine the proposals carefully and, in the meantime, to give full support to existing human rights and equality bodies to enable them to carry out their important functions.

Present situation

a) Positive developments

The Advisory Committee welcomes the measures taken to transpose the European Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. These measures have strengthened existing legislation on racial equality in Great Britain and Northern Ireland by introducing a new, broader definition of indirect discrimination on the grounds of race, ethnic or national origins, as well as by introducing a prohibition on racial harassment and by creating new regulations concerning the burden of proof. It is also a positive fact that the resulting legislation in Northern Ireland has extended protection against discrimination on grounds of race, ethnic and national origins to functions of public authorities that involve the provision of any form of social security, health care and any other form of social protection.

The Advisory Committee welcomes the introduction of a new prohibition on discrimination on grounds of religion and/or belief in employment or vocational training, in the form of Great Britain's Employment Equality (Religion or Belief) Regulations 2003. These new provisions resulted from the transposition of European Council Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation. The adoption of the Equality Act in 2006 has further extended protection against discrimination on grounds of religion and/or belief in Great Britain to the provision of goods, facilities and services, and public functions (including the important fields of policing and education).

Responding to criticisms of excessive complexity and inconsistencies in Great Britain's existing non-discrimination legislation, the Government initiated a Discrimination Law Review in February 2005 with the aim of creating a simpler and more coherent framework. This review is expected to result in a Single Equality Act covering all six strands of discrimination law (race, religion, gender, sexual orientation, disability and age) by 2008/2009. The Advisory Committee welcomes this review, whose objectives include not only exploring areas where protection against discrimination is currently inconsistent, but also examining the future scope of public sector duties and reviewing enforcement procedures and remedies against breaches of discrimination law.

The Advisory Committee welcomes the commitment expressed by the signatories of the St Andrews Agreement in 2006 (including the Government of the United Kingdom and the four main political parties in Northern Ireland) to work rapidly towards the adoption of a Single

Equality Bill for Northern Ireland, and to re-launch consultations with a view to producing a possible Bill of Rights for Northern Ireland. These two long-standing objectives had been put on hold as a result of the political stalemate in Northern Ireland following the suspension of the devolution process between Autumn 2002 and May 2007.

There have also been positive developments regarding the United Kingdom's institutional framework for promoting equality and human rights. In the context of Northern Ireland, the Advisory Committee welcomes the decision to strengthen the functions of the Northern Ireland Human Rights Commission, including its investigative powers. The Advisory Committee also notes the establishment of a new Commission for Equality and Human Rights (CEHR) under the Equality Act 2006. Scheduled to begin operating in October 2007, the CEHR will bring together the work of the three existing equality commissions in Great Britain, including the Commission for Racial Equality, which should help ensure greater coherence across Great Britain's anti-discrimination agenda and also better tackle cases of multiple discrimination.

b) Outstanding issues

The Advisory Committee regrets that the broad remit of Great Britain's Race Relations (Amendment) Act – which prohibits discrimination in any function carried out by a public authority or other body carrying out functions of a public nature – has not yet been extended to Northern Ireland.

The regulations introduced to transpose European Council Directive 2000/43/EC have created an inconsistency in British and Northern Ireland legislation by prohibiting discrimination on grounds of race, ethnic or national origins (in accordance with the European Council Directive) but not on grounds of colour or nationality, even though these two other grounds are covered in Great Britain's Race Relations Act 1976 and in Northern Ireland's Race Relations Order. The resulting regulations have therefore added further complexity to the United Kingdom's legislative framework for combating discrimination and have been criticised for unduly creating different standards of protection against discrimination for different groups.

The Advisory Committee regrets that Great Britain's new legislative provisions aimed at protecting against discrimination on grounds of religion and/or belief appear to be weaker than existing provisions for tackling discrimination on grounds of race and ethnic or national origins. In contrast to the Race Relations (Amendment) Act 2000, which imposes both general and specific race equality duties on public institutions, the new provisions relating to religious discrimination do not create positive duties on public institutions to promote religious equality.

Concerns about the effectiveness of the new CEHR are still widely held by representatives of minorities, who fear that the decision to merge the six anti-discrimination strands in the work of one commission may mean that less resources and support are given to combating racial discrimination than in the past. The Advisory Committee is also aware of concerns regarding the precise distribution of responsibilities between the CEHR and the soon to be established Scottish Commission for Human Rights, whose decisions will have precedence over the CEHR in all matters devolved to Scotland but whose mandate will be weaker.

Recommendations

The authorities are urged to introduce a more extensive prohibition of discrimination in Northern Ireland's race equality legislation in relation to public functions.

The authorities should ensure, when drafting the Single Equality Act for Great Britain and the Single Equality Bill for Northern Ireland, that existing inconsistencies in anti-discrimination legislation are removed and that vigorous protection is afforded against discrimination, not only on grounds of race and ethnic or national origins, but also on grounds of religion and/or belief.

It will be important to ensure that the Commission for Equality and Human Rights is given the resources and support it needs to properly carry out its functions across each of the six strands of equality. It will also be important to ensure good cooperation between the CEHR and the Scottish Commission for Human Rights.

Efforts to ensure full and effective equality

Findings of the first cycle

In its first Opinion, noting that persons belonging to certain minorities faced greater difficulties in their access to housing, employment and health services, the Advisory Committee encouraged the Government and the devolved Executives to continue their efforts to ensure full and effective equality for these groups, paying particular attention to the situation of women.

Noting the increasing costs and formalities associated with employment tribunal proceedings, the Advisory Committee called on the Government to consider the merits for introducing legal aid for representation in employment tribunals.

Present situation

a) Positive developments

Since the first monitoring cycle, there has been some progress in the fulfilment by public authorities in Great Britain of their specific duties under the Race Relations (Amendment) Act 2000, which include the duty to monitor, by racial group, staff in post and the number of applicants for employment training and promotion; the duty to conduct race equality impact assessments of all of their functions and policies; and the duty to prepare and publish race equality schemes explaining how they will achieve the above. Although the Advisory Committee does not have a full picture of the implementation of these duties across the country, it notes that most departments of the United Kingdom Government, the Welsh Assembly Government and the Scottish Executive have developed, or are in the process of developing, race equality schemes and ethnic monitoring arrangements. In 2005, the Government of the United Kingdom also adopted, for the first time, a cross-Government strategy to increase race equality and community cohesion, which includes precise targets across a number of policy areas, including education, employment, health, housing and the criminal justice system (see also comments under Article 15 below).

In Northern Ireland, the Advisory Committee welcomes the progress reported in efforts to achieve full and effective equality between Protestants and Catholics in the field of employment. Under the Fair Employment and Treatment (Northern Ireland) Order 1998, public sector employers and private sector employers with more than ten full-time employees have been required to monitor their workforces, regularly review their employment practices to determine fair participation and, where shortcomings persist, adopt additional measures to increase the participation of under-represented groups. The Advisory Committee understands that Northern Ireland's fair employment legislation deals only with equality on grounds of religious belief or political opinion, and not on grounds of race or ethnicity. The Advisory Committee is therefore pleased to note that, according to a recent report by the Equality Commission for Northern Ireland, Section 75 of the Northern Ireland Act 1998, which does cover equality between persons of different racial groups, has had some positive effects as well, especially as regards increasing access for persons belonging to minority ethnic communities to health services. The Advisory Committee also welcomes the adoption, in July 2005, by the Northern Ireland Administration, of a Racial Equality Strategy, intended to last for five years. The strategy explicitly recognises Northern Ireland as a pluralistic society and abandons the tendency for equality concerns in Northern Ireland to focus exclusively on relations between the two main communities.

The Advisory Committee notes the efforts made under the United Kingdom's race equality strategy to tackle the unemployment gap between minority ethnic communities and the majority population in the private sector. In 2003, the Government published a Cabinet Office report on the situation of ethnic minorities in the labour market with 28 recommendations, which are now being taken forward by the Ethnic Minority Employment Task Force, made up of Government and non-government representatives. According to information provided by the government, there has been some, albeit limited, progress narrowing the employment gap since the establishment of this work force (see also comments under Article 15 below). The Advisory

Committee is pleased to note that the Scottish Executive set up, in June 2005, its own strategic group to address racial inequalities that exist in the Scottish labour market, which is shortly due to produce an action plan. In Northern Ireland, steps have been taken to address the high levels of unemployment among the Traveller population, following the recommendations issued in 2000 by the Government's Promoting Social Inclusion Working Group on Travellers.

The Advisory Committee welcomes the fact that, under the Race Relations (Amendment) Act 2000, local authorities in Great Britain are required to mainstream racial equality in their housing policies, although progress implementing this requirement has so far, reportedly, been slow. The Advisory Committee also welcomes the efforts made at central level to introduce new regulations with a view to alleviating the accommodation difficulties faced by the Gypsy and Traveller populations (for more comments, including difficulties at the level of implementing these regulations, see Article 5 below).

Efforts have been made to promote racial equality in access to health services, although progress varies considerably among health providers and between localities. Equality schemes adopted by the Departments of Health in the various jurisdictions acknowledge the crucial importance of interpretation and translation services in delivering health services to persons belonging to minorities and the Advisory Committee welcomes the efforts made to offer these services, free of charge, by most health providers across the country. In recognition of the particular difficulties registering with General Practitioners faced by Gypsy and Traveller groups, the Scottish Executive has developed patient-held records in some localities which take due regard of the itinerant life-style of many Gypsies/Travellers.

Finally, the Advisory Committee takes note of the steps taken to eliminate discrimination against persons belonging to minority ethnic communities and to promote confidence among them in the criminal justice system, although progress in this regard varies across the different jurisdictions (see comments under Article 6 below).

b) Outstanding issues

The Advisory Committee notes that Northern Ireland's race equality legislation does not require employers to monitor their workforces and employment practices in respect of ethnicity. Whilst Section 75 of the Northern Ireland Act makes it a duty for public authorities to assess the impact of their policies on the promotion of equality of opportunity also in respect of persons belonging to minority ethnic communities, this "duty to assess" is not as rigorous as the monitoring duties imposed on employers under Northern Ireland's fair employment legislation. Whilst it is encouraging that Northern Ireland's Racial Equality Strategy, launched in 2005, advocates the extension of ethnic monitoring, the Government acknowledges that there is still very little data on the situation of persons belonging to minority ethnic communities in Northern Ireland, not only as regards employment, but also in respect of the delivery of public services, especially in certain sectors such as health and welfare.

The Advisory Committee notes that, more than five years after public authorities in Great Britain were obliged under the Race Relations (Amendment) Act 2000 to have equality schemes and policies in place, there are still designated public authorities (including many local authorities in Wales) that have not complied with this duty. Shortcomings have also been reported, especially in Scotland and Wales, in the implementation by certain public authorities of their duty to collect and publish data on the situation of minority ethnic communities in their respective sectors. The Commission for Racial Equality has initiated compliance proceedings with over 150 public authorities in Great Britain, which are not meeting their public duty to promote race equality. More generally, the Advisory Committee notes that, in both Great Britain and Northern Ireland, public authorities have tended to respond to their statutory duties to promote racial equality by focusing on procedures (including the adoption of equality schemes) and not to the same extent on changing practices and identifying targets in order to achieve equality of outcomes.

The Advisory Committee notes that persons belonging to certain minority ethnic communities in England are still almost twice as likely to be unemployed as the national average. According

to a recent report published by the Equal Opportunities Commission, racism, sexism and anti-Muslim prejudice are amongst various reasons explaining the particularly high unemployment rates among Pakistani, Bangladeshi and Black Caribbean women. The situation is also particularly difficult for Gypsies and Travellers who are often unable to maintain their traditional occupations owing to accommodation difficulties (see comments under Article 5) and who lack the skills and qualifications necessary to enter the wage economy. In this context, the Advisory Committee regrets the fact that the United Kingdom Government has not referred to the particular situation of Gypsies and Travellers in the above-mentioned labour market strategy adopted in 2003. While the authorities of Northern Ireland have begun to take actions to meet the employment and training needs of the Traveller community, the measures taken so far have not been sufficient to reduce the persistence of long-term unemployment amongst this community.

The Advisory Committee has also received disconcerting reports about cases of migrants in the United Kingdom, working under temporary contracts or in some cases under no contracts, leaving them vulnerable to numerous forms of exploitation.

In view of the particular difficulties facing persons belonging to certain minority ethnic communities in the field of employment, the Advisory Committee regrets the information it has received suggesting that the Government is failing to adequately monitor the impact on ethnic minorities of current pension reform proposals.

In the field of housing, Government statistics continue to indicate that persons belonging to minority ethnic communities are much more likely to experience sub-standard housing conditions, including over-crowding and homelessness, than the overall population. In Northern Ireland, problems facing minority ethnic communities in the field of housing (particularly over-crowding for migrant workers) are reportedly compounded by the increasing occurrence of racist attacks in the neighbourhoods which they inhabit. In Scotland, due partly to the shortage of transit sites and through the legacy of past policies of assimilation, there are cases of Gypsies/Travellers living in settled accommodation in squalid conditions.

Considerable inequalities also continue to confront persons belonging to minority ethnic communities in the health sector, with certain ethnic communities suffering disproportionately from certain health conditions. Language barriers continue to be one of the obstacles preventing equal access to health. This could be resolved by providing more information to minorities concerning the availability of interpretation and translation services. Another obstacle appears to be the continuing shortage of adequate ethnic data, especially concerning communities that are not captured by the existing census categories (see comments under Article 3 above). One of these poorly monitored communities – the Gypsy and Traveller populations – face particular difficulties as few hospitals or clinics attempt to accommodate the needs of communities with itinerant life-styles.

The Advisory Committee regrets that, in England and Wales, legal aid is still only available at the appeal stage of cases brought to employment tribunals, thereby acting as a disincentive to potential claimants. Whereas legal aid is theoretically available for discrimination cases in fields other than employment, other developments, including a recent package of reforms to the whole system of procurement for legal aid funding in England and Wales (above all, the decision to establish fixed fees rather than hourly fees for lawyers) threaten to make it more difficult to obtain legal representation in discrimination cases across all sectors.

Recommendations

The Advisory Committee urges the authorities in Northern Ireland, Scotland and Wales in particular to pursue further their efforts to collect data on the situation of minority ethnic communities in all relevant sectors.

The authorities should ensure that the bodies in charge of ensuring compliance by public authorities with their statutory duties to promote equality have the necessary resources and

support to accomplish their tasks. Greater emphasis should be placed by public authorities on identifying targets and changing practices in order to achieve equality of outcomes.

More rigorous efforts are needed to tackle racial inequalities in employment, making greater use of positive action opportunities and procurement procedures provided by the law. This should be preceded by close consultations with the groups concerned in order to identify the most appropriate measures of support.

The authorities are urged to examine further the situation concerning the system of procurement for legal aid funding and identify the ways and means to improve access to legal aid, especially in cases of employment discrimination.