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Working document

Compilation of Opinions of the Advisory Committee relating to Article 4
of the Framework Convention for the Protection of National Minorities
(3rd 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."

Note: this document was produced as a working document only and does not contain footnotes. For publication purposes, please refer to the original opinions.

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As of 13 May 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted a total of 36 opinions, of which 33 opinions on Article 4.

* 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.

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 23 November 2011

Article 4 of the Framework Convention

Legislative framework for prohibiting discrimination

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to complete the legislation prohibiting discrimination, notably against persons belonging to minorities, so as to ensure that all relevant areas were covered.

Present situation

The Advisory Committee welcomes the adoption, in February 2010, of the Law on Protection from Discrimination which aimed to base the Albanian legislation in this field on the standards laid down in the European Council Directive on Racial Equality (2000/43/EC), and the European Council Directive on Employment Equality (2000/78/EC). This law provides protection and prohibits discrimination, in particular, on racial, ethnic, national or religious grounds and establishes legal jurisdiction in procedures alleging breaches of its provisions. The Advisory Committee notes in particular the shifting of the burden of proof and the provision allowing third parties to intervene as *amicus curiae* in cases of discrimination.

The Advisory Committee welcomes the appointment, in April 2010, of the Commissioner for Protection from Discrimination (CPD), who has been empowered, together with the courts, to enforce the law and, in particular, to examine complaints from individuals, conduct administrative investigations, impose sanctions, and represent the complainants before judicial bodies in civil cases. The Commissioner can also make recommendations and conduct awareness-raising activities.

The Advisory Committee notes that, according to the information available in September 2011, the Commissioner received 10 complaints, including one concerning the displacement of a Roma settlement by the police in Tirana. In this particular case, based on the information received, the Commissioner lodged the complaint against the police and the procedure is ongoing.

The Advisory Committee notes that the Commissioner has organised a number of awareness-raising activities amongst the public in co-operation with the Ministry of Labour and Social Affairs. It notes however that, in spite of these efforts, general awareness of the provisions of the law among the public and key professional groups remains low.

Recommendation

The Advisory Committee encourages the authorities to maintain their support for the activities of the Office of the Commissioner for Protection from Discrimination by continuing to provide it with appropriate resources, including financial ones, in order to allow the Office to fulfil its duties effectively and independently and to increase the monitoring of alleged cases of discrimination.

Monitoring discrimination and available remedies

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee asked the authorities to develop campaigns to make both the general public and national minorities aware of the means of redress available in the event of discrimination.

Present situation

The Advisory Committee welcomes the amendments made to the Criminal Code in 2007 in order to make discrimination relating to sex, race, religion, nationality, language, political and religious or social beliefs the aggravating circumstance of any offence. In 2008, the Criminal Code was amended further to "criminalise the distribution of racist or xenophobic materials through computer systems and insult for racist or xenophobic motives referring to distribution through computers of materials related to genocide, crimes against humanity, racism and xenophobia".

The Advisory Committee notes with interest that certain training activities have been organised, following the enactment of the amendments to the Criminal Code. These have focused in particular on human rights issues and the implementation of the new legislative provisions pertaining to discrimination, racism and hate crimes.

Recommendation

The Advisory Committee encourages the authorities to prevent, investigate and prosecute perpetrators of offences committed with racial or xenophobic motives and to provide for constant monitoring of this phenomenon within society.

Office of the People's Advocate

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee asked for the People's Advocate to put more emphasis on overcoming indirect discrimination in cases involving persons belonging to national minorities.

Present situation

The Advisory Committee notes that the Office of the People's Advocate continues to play an active role in protecting human rights in Albania, in particular, in raising public awareness of the rights of persons belonging to national minorities and in seeking solutions to outstanding problems. In this context, the Advisory Committee welcomes a National Seminar on "Albanian Society - Challenges and non-discrimination." This took place in December 2010 and was organised by the Office of the People's Advocate in collaboration with the Commissioner for Protection from Discrimination, the Ministry of Interior, the Ministry of Labour, Social Affairs and Equal Opportunities, as well as by a number of important civil society actors.

The Advisory Committee notes that the acting People's Advocate and her Office are well-known in Albania and enjoy a high degree of trust from the public as well as from the authorities. Although the People's Advocate decisions are non-binding, the authorities have implemented a number of her recommendations.

The Advisory Committee notes that, in 2010, the Office of the People's Advocate handled 3,264 applications, of which only 10 cases were lodged by the Roma alleging discrimination on ethnic grounds. A number of these applications, which concerned the alleged delay in registration procedures by the Office of the Civil Shkoder Municipality, were satisfactorily resolved.

The Advisory Committee welcomes in particular the action taken by the People's Advocate to elucidate the circumstances of the attack on the Roma settlement near the Tirana train station in February 2011, in which unidentified perpetrators attacked and burned down dwellings inhabited by some 40 families, whilst the police failed to take appropriate measures to protect these people. In particular, the Advisory Committee welcomes the action taken by the Office of the People's Advocate to identify shortcomings in the internal police investigation and disciplinary proceedings.

Recommendation

The Advisory Committee urges the authorities to continue providing the Office of the People's Advocate with the appropriate level of financial and human resources, in order to allow it to fulfil its duties effectively and independently.

Socio-economic situation of the Roma

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee urged the authorities to include Roma in the population register, to step up their efforts, in conjunction with municipalities and associations active in this area and to make Roma parents aware of their obligation to register their children's births.

The Advisory Committee further called on the authorities to intensify their efforts to implement the National Strategy on the Roma, in particular by specifying the division of responsibilities among central government, local authorities and non-governmental organisations, by providing for appropriate budgetary funding and resources and by taking steps to collect statistical data on the situation of Roma and developing assessment indicators for the strategy.

The Advisory Committee also asked the authorities to ensure that evicted persons were treated equally in relation to re-housing and, in particular, that specific monitoring would be undertaken regarding the re-housing of persons belonging to the Roma minority.

Present situation

The Advisory Committee notes that for some years the authorities have increased efforts to combat discrimination and integrate Roma into society, in particular in the framework of the National Strategy for the Improvement of the Living Conditions of the Roma adopted in 2003, followed later by the adoption in 2009 of the National Action Plan 2010-2015 for the Decade of Roma Inclusion. This plan laid down a set of tasks geared to ensure equal treatment in the areas of education, employment and social protection, housing and infrastructure, access to health care and cultural heritage.

The Advisory Committee notes in this context that the budgetary provisions for the Action Plan constitute only a potential source of funding, thus endangering the effective implementation of the activities listed in the Plan. The Advisory Committee considers that the lack of resources will have a negative impact on the achievement of the objectives laid down in the Plan.

The Advisory Committee welcomes the amendments to the legislation on civil registration which extended the statutory time-limit for registration of a new-born child from 45 to 60 days, abolished fines for late registration and the need for initiating a court procedure in order to register a child outside the time-limit. The authorities also introduced the financial incentive of

paying a bonus of 5,000 ALL to families for registering a birth within a prescribed time limit. According to the information provided by Roma representatives to the Advisory Committee, these steps have led to a reduction in the number of cases of unregistered births of Roma children.

The Advisory Committee notes in this context that the above steps taken by the authorities, together with the circular of the Ministry of Education and Science of 2006, which permitted school enrolment of Roma children without birth certificates, has already yielded already some positive results by increasing the number of Roma children attending classes.

The Advisory Committee also notes that a number of projects, aimed at improving the social inclusion of Roma and Egyptians, have been implemented in co-operation with the UNDP, civil society and the authorities. These included assistance with civil registration through the training of court officials and lawyers and an awareness-raising campaign among Roma and Egyptians, vocational training of Roma, including that of Roma health mediators and teaching assistants. Further measures included an increase in the participation of Roma and Egyptians in local decision-making through their collaboration in the development and implementation of various infrastructure projects, such as the establishment of pre-schools, connecting homes to water and sewage networks and refuse collection.

The Advisory Committee notes that the Ministry of Public Works, Transport and Telecommunication allocated an amount of 30 million ALL in the budget for 2008 to finance housing construction and infrastructure projects (running water, sewage treatment) in the municipalities of Kuçova, Bilisht and Pojan. The Advisory Committee regrets to find that, despite these measures, the living conditions in some Roma settlements remain inadequate. Lack of sanitation, livestock waste and insufficient refuse collection create serious dangers to human health and pose serious epidemiological risks. The Advisory Committee was very concerned to learn that, in such circumstances, no funding had been allocated in 2009 and 2010 in order to continue the necessary investments in the most needy Roma neighbourhoods.

Recommendations

The Advisory Committee strongly urges the authorities to exert more effort to prevent, combat and sanction the inequality and discrimination suffered consistently by the Roma. The authorities must step up their efforts, in particular at local level, to improve the living conditions of Roma and to promote their integration into society. The authorities should ensure that the persons concerned have the possibility to participate effectively in the consultation and decision-making processes regarding such improvements.

The Advisory Committee urges the authorities to guarantee the funding necessary for the effective implementation of the National Action Plan 2010-2015 and other infrastructure projects.

2. Armenia

Opinion adopted on 14 October 2010

Article 4 of the Framework Convention

Institutional and legal developments in the area of discrimination

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to remain vigilant with regard to possible cases of discrimination, and to monitor carefully the situation in this respect.

Present situation

There have been no significant changes as regards anti-discrimination legislation since the last Opinion. The Constitution of Armenia provides in Article 14.1, which was added following the constitutional reform of 2005, that “Everyone shall be equal before the law. 2. Discrimination on the ground of gender, race, colour, ethnic or social origin, genetic features, language, religion, outlook, political and other views, membership to a national minority, property status, birth, disability, age or other circumstances of a personal or social nature shall be prohibited.”

The Criminal Code criminalises actions aimed at the “incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity”. In addition, the Law on Non-Governmental Organisations forbids the establishment of an organisation advocating the overthrow of the constitutional order, incitement to national, racial or religious hatred, or propaganda on violence and warfare. Such a prohibition also exists in the Law on Political Parties. The Advisory Committee notes also that, according to the information provided by the authorities, there are some anti-discrimination provisions in the legislation on criminal procedure, social security and labour relations.

According to the information available to the Advisory Committee, there have been a few isolated cases of discrimination against persons belonging to religious minorities, including one case concerning a person belonging to a recognised national minority. Some of the victims of discrimination sought redress in courts and obtained satisfaction.

The Advisory Committee considers that the current fragmented approach of the Armenian authorities to anti-discrimination legislation does not guarantee adequate protection against discrimination. It further considers that the authorities should review their approach and should envisage adopting comprehensive legislation against discrimination drawing inspiration from the relevant provisions of the General Policy Recommendations of the European Commission against Racism and Intolerance.

The Advisory Committee notes with satisfaction that the Office of the Human Rights Defender continues to enjoy wide-spread public support and that it receives a substantial number of complaints (3,783 in 2009), including from organisations representing persons belonging to national minorities. The Advisory Committee notes that these complaints were of a general nature and did not allege violations of specific rights of persons belonging to national minorities.

The Human Rights Defender also has the authority to start investigations on his/her own initiative, especially in alleged cases of mass violations of human rights and basic freedoms. The Advisory Committee notes however, that the recommendations of the Human Rights Defender are of an advisory, rather than a legally binding nature.

The Advisory Committee notes with regret that the authorities do not collect statistical data on the number and nature of cases of discrimination in various fields.

Recommendations

The Advisory Committee calls on the authorities to envisage adopting, in consultation with representatives of civil society and the Human Rights Defender, comprehensive legislation on the prohibition of discrimination 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 also encourages the authorities to continue to take all necessary measures to prevent and combat discrimination.

The Advisory Committee considers that the authorities should put in place mechanisms to collect data on complaints regarding discrimination, including cases of discrimination registered in courts, in order to facilitate the evaluation of the effectiveness of the legislative and institutional mechanisms in place.

The Advisory Committee calls on the authorities to maintain their support for the activities of the Office of the Human Rights Defender by continuing to provide it with appropriate resources, including financial ones, to allow it to fulfil its duties effectively and independently and to intensify the monitoring of alleged cases of discrimination.

Ethnic data collection

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to undertake collection of statistical data on national minorities in order to facilitate the development of effective positive measures targeting persons belonging to national minorities.

Present situation

The Advisory Committee notes that the State Report did not provide specific data, more recent than the information obtained in the census of 2001, other than those concerning migration flows of population disaggregated by ethnicity. The Advisory Committee regrets, having received complaints from persons belonging to the Yezidi national minority concerning their difficult socio-economic situation, that the authorities do not collect information on the situation of persons belonging to the various national minority groups, in the various relevant sectors, such as access to employment, health care services, housing, etc.

The Advisory Committee is of the opinion that the lack of reliable statistics, disaggregated by age, gender and geographical distribution, especially in the field of employment, leads to increased difficulties in elaborating targeted policies to remedy these problems. 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. It is also important to organise awareness-raising campaigns among national minorities on the necessity to collect such data for the elaboration of adequate policies.

Recommendation

The authorities should adopt measures aimed at collecting reliable socio-economic data disaggregated by age, gender and geographical distribution, in all relevant fields, in particular in relation to employment, and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification and in accordance with international standards on personal data protection.

3. Austria

Opinion adopted on 28 June 2011

Article 4 of the Framework Convention

Anti-discrimination legislation

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to strengthen the capacity of the Ombudspersons for Equal Treatment and of the Equality Commission so as to guarantee sufficient resources and competencies to ensure their independence and their capacity to provide adequate assistance. It further invited 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).

Present situation

The Advisory Committee notes the new amendments to the equal treatment legislation of March 2011, which among others streamline the three sections of the office of the Equal Treatment Ombudspersons into two, and render the proceedings before the body more transparent. While welcoming these changes, the Advisory Committee notes that the anti-discrimination legislation overall is still marked by a complex and scattered structure, encompassing over 20 different acts, including laws adopted by the *Länder*. Moreover, the Advisory Committee regrets that only very few cases related to discrimination based on ethnic background are brought before the equality bodies. This, according to the accounts of persons belonging to national minorities, is not due to a lack of discriminatory treatment in Austria, but rather points to the insufficient awareness among society as well as the judiciary and law enforcement of the possibilities provided by the equal treatment legislation to seek redress.

The Advisory Committee further notes that the existing legislation still features shortcomings, among others related to the burden of proof which has not been adequately altered. In addition, the Equal Treatment Commission and Ombudspersons still seem understaffed and under-resourced. It is furthermore regrettable that they do not have local branches in the *Länder*, which could significantly increase the awareness among the public, particularly among persons most vulnerable to discrimination, of the remedies available to them in the case of discrimination.

Recommendations

The Advisory Committee strongly encourages the Austrian authorities to further increase the financial and human resources available to the Equal Treatment Ombudspersons and Commission to ensure that they are adequately equipped to provide assistance and advice to persons who may have been victims of discrimination throughout Austria. To this end, branches of the equal treatment bodies should be established in the *Länder*.

The Advisory Committee further urges the authorities to expand their awareness-raising efforts regarding discriminatory practices and the legal remedies available against them among the population, paying particular attention to persons most vulnerable to discrimination, and to redouble their training initiatives among federal and *Länder* law enforcement bodies and the judiciary.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee observed large discrepancies between the results of various population census regarding the number of persons belonging to national minorities and the estimations of the communities themselves. It invited the authorities to seek appropriate ways of collecting data on persons belonging to national minorities, including on their socio-economic and educational situation, in close co-operation with those concerned and in line with the relevant international principles.

Present situation

The Advisory Committee notes that the Austrian authorities will carry out a completely register-based census in 2011. The legal basis is the Register-based Census Act of 16 March 2006, which in § 1 (3) foresees the possibility to organise in addition a census regarding the use of languages as well as religious affiliation. The Advisory Committee understands that such an additional census regarding the use of languages is not currently planned, among others, because minority representatives consider the results of the past census exercises in 1991 and 2001 as inaccurate as – due to actual or perceived pressure - many persons belonging to national minorities indicated German as their mainly-used language. The Advisory Committee underlines in this context that any future census related to language use must contain open-ended lists, allowing the indication of Romani varieties, for instance, and must include the possibility to indicate multiple languages to ensure that the high number of bilingual persons belonging to national minorities are adequately reflected.

The Advisory Committee further notes, however, that statistical data, including those resulting from census exercises, should only be given an indicative value since they bare the risk of underestimation, particularly in areas where strong assimilation occurred in the past. They should thus be supplemented by socio-scientific surveys and other independent research regarding the number and situation of persons belonging to national minorities. While noting that interesting individual research has been prepared and supported by the government, it considers that a comprehensive assessment of the situation, including access to employment, of persons belonging to national minorities, is indispensable to ensure full and effective equality. The lack of such data, for instance, leads the authorities to the assumption that there are no significant differences with the majority population with regard to employment opportunities for the autochthonous Roma community. Evidence presented to the Advisory Committee, however, indicates that members of the Roma community still find it significantly more difficult than the rest of the population to find formal employment.

Recommendations

The Advisory Committee strongly encourages the Austrian authorities to ensure that any future census related to language use contains open-ended lists and allows for the possibility to indicate multiple languages and identities.

The Advisory Committee further encourages the Austrian authorities to continue to seek alternative means of obtaining reliable data on the situation of national minorities, in full respect of the relevant international standards and in co-operation with the communities concerned, as basis for the preparation of comprehensive policies to promote full and effective equality. These should be designed, implemented and regularly monitored in close consultation with minority representatives.

Situation of Roma

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the Austrian authorities to implement more resolute and comprehensive policies and programmes to promote equal opportunities for persons belonging to the Roma minority. It further suggested that continuity of the support be ensured in the long term and particular attention paid to the situation of Roma youth and women.

Present situation

The Advisory Committee notes the continued efforts by the Austrian federal as well as *Länder* authorities to support projects and initiatives aimed at improving the situation of Roma. However, it notes with concern that comprehensive policies to promote equal opportunities and broader societal acceptance for the Roma population have still not been developed. While noting the authorities' view that the continued disadvantages of the Roma population are linked to overall lower levels of education, the Advisory Committee points out that the Roma themselves indicate that deep prejudice and stereotypes in society still prevent them from gaining equal access to the labour market, even for persons with good quality educational background. Furthermore, the Advisory Committee learned that insufficient attention is still paid to the Roma living outside Burgenland, in particular in Vienna.

The Advisory Committee notes with interest that important services and advice are successfully being provided to the Roma population in Burgenland and Vienna by the Roma representatives themselves. Support, notably financial, must be increased, however, to allow these organisations to become even more effective, including in the field of public information, and contribute to an increase in societal acceptance for Roma overall.

Recommendation

The Advisory Committee reiterates its call on the Austrian authorities to develop and implement in close consultation with Roma representatives, comprehensive and long-term policies and programmes to promote equal opportunities for persons belonging to the Roma community, including those living outside Burgenland. Measures must encompass initiatives aimed at increasing access to education and the labour market, as well as general efforts to enhance societal acceptance and decrease prejudice and stereotyping.

4. Azerbaijan

Opinion adopted on 10 October 2012

Article 4 of the Framework Convention

Legislation, policies and practice to combat discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to develop detailed and comprehensive antidiscrimination legislation providing effective remedies to potential victims of discrimination in all spheres of life, and noted that such legislation should permit the adoption of specific positive measures aimed at the full and effective equality of persons belonging to national minorities, in particular numerically smaller ones. In addition, the Advisory Committee underlined the necessity to conduct comprehensive training and awareness-raising among relevant officials as well as society at large to ensure that the available remedies were effectively used.

Present situation

The Advisory Committee notes that there are no current plans to adopt comprehensive antidiscrimination legislation. According to officials in the Human Rights Committee of the Milli Mejlis (Parliament) as well as the Ministry of Justice, there is no need for such legislation given equality and non-discrimination guarantees contained in Article 25 of the Constitution. While acknowledging that most interlocutors, including minority representatives, indicated that they don't feel affected by discrimination based on ethnic grounds, the Advisory Committee observed an only limited understanding among officials as well as society at large of the definitions of direct and indirect discrimination and their multiple manifestations. Indeed, the very low number of reported cases based on discrimination, for instance under Article 154.1 of the Criminal Code which expressly prohibits discrimination based, among others, on ethnic background, appear to attest to a significant lack of awareness among the population as well as law enforcement officials of the legal remedies available in this regard.

The Advisory Committee further notes that the Ombudsperson continues to pursue her mandate as an independent human rights protection agency. This mandate was expanded in December 2011 to include leading the working group on coordination of the implementation of the 'National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan'. The Office of the Ombudsperson has 58 staff members as well as four regional branch offices with three staff each who mainly liaise with the capital to facilitate contact of the rural population with the Office. The Office receives an increasing number of appeals; roughly half, however, are deemed inadmissible which seems to indicate that the precise mandate and functions of the Office are still not well understood by the population. While no disaggregated data concerning the background of complainants or the nature of their allegations is collected, the Advisory Committee was informed that no complaint had been received based on racial or ethnic discrimination. This contradicts the reports received by the Advisory Committee and noted also by other monitoring bodies of continued discrimination and intolerance against persons belonging to some national minorities, notably ethnic Armenians.

The Advisory Committee was also made aware that the number of complaints received in the regional offices remains small compared to those received by non-governmental human rights organisations. While a number of activities related to general human rights awareness and education are being conducted by the regional offices in co-operation with the local

administration, the broader role and importance of an independent Ombudsperson to combat all forms of discrimination in society appear still to be only little understood. In addition, trust in the independence and effectiveness of the Ombudsperson and her office among broader society is, according to a number of interlocutors of the Advisory Committee, still very limited.

Recommendations

The Advisory Committee reiterates its recommendation to adopt and implement comprehensive and detailed antidiscrimination legislation and urges the authorities to ensure that relevant officials and society at large are made aware of the multiple forms of discrimination that exist today. Efforts to train law enforcement services and the judiciary in this regard must be strengthened.

The Advisory Committee calls on the Ombudsperson to actively and independently pursue her mandate and enhance efforts to raise awareness of available remedies against discrimination among the population. It is especially important that persons most exposed to discriminatory attitudes are fully informed of their options and that their trust in the independence and professionalism of the recourse is increased.

Collection of ethnic data

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to develop further means of collecting relevant information on the situation and access to rights of persons belonging to national minorities, while fully respecting international data protection standards, in order to facilitate the adoption of adequate and effective measures to meet the needs of these persons.

Present situation

The Advisory Committee notes with regret that there is no progress concerning the readiness of the authorities to collect data related to ethnic, national, and linguistic affiliation of the population outside the census. While the number of students learning minority languages, for instance, is recorded, there is no monitoring of the specific obstacles faced by persons belonging to national minorities in accessing rights. The authorities' understanding of the particular problems faced by parts of the population (see below) is therefore limited. The Advisory Committee recalls again that up-to-date and accurate data on the socio-economic and educational situation of persons belonging to national minorities, including the numerically smaller ones, is indispensable to devise effective policies aimed at responding to their needs and promoting their full equality.

Recommendation

The Advisory Committee urges the authorities to collect, in line with international data protection standards further information on the situation of persons belonging to national minorities so as to be able to respond effectively to their needs.

Promotion of full and effective equality

Present situation

The Advisory Committee notes with concern that some groups among the national minority population are still facing considerable obstacles with regard to their access to rights. This includes

an uncertain number of stateless persons, *inter alia* of ethnic Armenian origin, who were not able to obtain national passports when the old USSR passports were replaced in 2003. According to information at the disposal of the Advisory Committee, persons belonging to this group face substantial difficulties in obtaining documents despite lengthy court proceedings, while their lack of legal status prevents their access to social and economic rights. Persons belonging to other national minorities have also reported unequal opportunities for them in accessing the labour market, particularly at senior level, as well as unequal treatment in obtaining funds and other public support that is available to persons belonging to the majority population.

The Advisory Committee regrets that no progress has been made with regard to efforts to promote equal opportunities for persons belonging to national minorities. Indeed, the legislative conditions for specific measures to promote access to rights for some groups have become less favourable, following the addition of two new paragraphs to Article 25 of the Constitution in 2009 that prohibit the granting of privileges or the refusal of advantages to anyone based on, *inter alia*, nationality. The Advisory Committee was informed repeatedly that any special measures for particular groups would not be in line with the Constitution as such privileges would be considered discriminatory. It reiterates its position that such an approach is not compatible with Article 4.3 of the Framework Convention, which explicitly provides that adequate measures to promote full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be considered to be an act of discrimination.

The Advisory Committee was pleased to learn, however, of the substantial progress that has been made to promote the living conditions and access to rights of the large population of persons displaced by the Nagorno Karabakh conflict. The Government of Azerbaijan and international donors have made available generous funds to build appropriate new housing for the remaining residents of 16 villages and the resettlement of all displaced persons into new premises is expected to be completed in 2013. At the same time, the Advisory Committee welcomes the other measures taken in favour of internally displaced persons such as the exemption from all tax and utility fees, educational subsidies as well as special employment advantages. It notes with concern, however, that a significant proportion of this population, particularly in rural areas, do reportedly not possess displacement certificates, which prevents them from accessing these advantages. The Advisory Committee is concerned that internally displaced persons of minority background, such as Kurdish or Armenian, reportedly face particular problems in obtaining certificates or indeed other legal documents.

Recommendation

The Advisory Committee reiterates its call on the authorities to facilitate the adoption of special measures with clear targets and associated resources to promote the full and effective equality of persons belonging to national minorities, including those within the displaced population, in line with Article 4 of the Framework Convention. The effectiveness of any such measures should be regularly monitored and evaluated, in consultation with national minority communities themselves.

5. Bosnia and Herzegovina
Opinion adopted on 7 March 2013

Article 4 of the Framework Convention

Legislation to combat discrimination and existing remedies

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee encouraged the authorities to complete without delay the enactment of comprehensive anti-discrimination legislation, including available and accessible remedies in cases of discrimination. It also urged the authorities to raise public awareness of the existing legal remedies in cases of discrimination and to ensure that the new State-level Ombudsman had the capacity to play its role as an independent and accessible remedy for human rights abuses effectively.

Present situation

The Advisory Committee welcomes the enactment of comprehensive anti-discrimination legislation at State level in 2009. It also notes with interest that the State-level Human Rights Ombudsman institution is now fully operational and has replaced the two previous Entity institutions, which have been disbanded. The Institution of Human Rights Ombudsman is designated under the anti-discrimination law as the central institution competent to guarantee protection against all forms of discrimination, and published its first report on discrimination in Bosnia and Herzegovina in February 2012. The Advisory Committee welcomes this very positive development but is concerned that cutbacks made to the budget of this Institution may be disproportionately affecting its capacity to work effectively in this field. It also notes that according to the current internal structures of the Institution, the Department for the Protection of the Rights of National, Religious and Other Minorities is separate from the Department for the Elimination of All Forms of Discrimination. It observes that in order to provide the most effective assistance to persons belonging to national minorities regarding their complaints, it is vital to ensure that a clear, systematic and comprehensive approach is taken to complaints involving possible discrimination and that there is very close coordination and communication between these two departments.

The Advisory Committee notes with concern the conclusion of the Ombudsmen that citizens remain very poorly informed of the possibility of addressing discrimination complaints to the Institution of Human Rights Ombudsman, and that there is significant under-reporting of discrimination in Bosnia and Herzegovina as well as little recourse to the courts in such cases. The Ombudsmen have indicated that in the period up to March 2012, four complaints have been received in which the complainants alleged discrimination based on association with a national minority: three in the field of public employment and one in the field of health. In other complaints lodged by persons belonging to national minorities in that period, the complainants did not allege discrimination and the Ombudsmen did not find that discrimination had occurred. The Advisory Committee is concerned that little account appears to be taken of possible indirect discrimination in the rare cases where persons belonging to national minorities have complained to the Ombudsmen. The focus in such cases appears to have been essentially on whether the letter of the law was correctly applied, with little attention paid to whether the relevant legal provisions themselves had a disproportionately negative impact on some groups of the population.

The Advisory Committee is concerned not only that awareness of discrimination amongst citizens – and in particular persons belonging to national minorities – is low, but also that cases in which direct or indirect discrimination may have occurred alongside the independent violation of a right may be being missed or not dealt with through a systematic, comprehensive approach. The refusal to provide health care to persons without the necessary documents, for example, may be the result of the same manner of applying the law to all individuals, but has a disproportionate impact on Roma, who are much more likely to be lacking the necessary documents (on the access of Roma to health care, see also below, Article 15). The failure to emphasise the indirectly discriminatory aspects of cases such as this is unfortunate as it means that indirect discrimination is likely to persist, as measures designed to combat this aspect of a problem are not necessarily identified or taken.

Recommendations

The Advisory Committee urges the authorities to ensure that the Institution of Human Rights Ombudsman has all the necessary financial and human resources to carry out its functions effectively and efficiently.

It also calls on the authorities to support awareness-raising activities about discrimination and the remedies available to victims of discrimination in Bosnia and Herzegovina, with a particular focus on reaching persons belonging to national minorities.

The Advisory Committee recommends that the Ombudsman institution take a more systematic, comprehensive approach to discrimination, both in handling individual complaints involving possible direct or indirect discrimination and in its broader outreach activities.

Discrimination in access to political posts

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called on the authorities to find means to remedy the total exclusion from certain political posts of persons belonging to national minorities and, in some instances, persons belonging to the constituent peoples. It urged them in this context 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.

Present situation

The Advisory Committee notes with deep concern that no changes have been made to the Constitution of Bosnia and Herzegovina in order to remedy the exclusion of persons belonging to national minorities from access to certain political posts. This is the case despite the delivery of a judgment of the European Court of Human Rights in December 2009 concluding that the requirement that the applicants (who identified themselves as Roma and Jewish respectively) declare affiliation with a constituent people in order to be eligible to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina were in breach of the ECHR. While various bodies have been set up to propose solutions (most recently a Joint Commission established within the Parliament of Bosnia and Herzegovina, with the specific task of addressing the execution of the *Sejdić and Finci* judgment), deadlines have been set and promises made to

achieve results, the 2010 elections were held under the same rules as those found to have breached the Convention, subsequent deadlines have been ignored, no agreement has yet been reached on how to move forward on these issues, and discussions on this matter have systematically become embroiled in disputes between the constituent peoples on how to safeguard their positions in the political system of Bosnia and Herzegovina. All of this occurs to the apparent exclusion of any real interest in resolving the key issue at stake in this case, namely the need to ensure that persons who do not identify themselves as belonging to one of the three constituent peoples, including persons belonging to national minorities, are not automatically excluded from standing for certain political offices in the country. It is particularly significant in this respect that the current Joint Commission includes only one person belonging to a national minority, who moreover has only observer status with no right to speak, and that proposals put forward by the Council of National Minorities for the execution of the *Sejdić and Finci* judgment have been left aside.

The Advisory Committee draws the attention of the authorities to the Court's finding that "while...there is no requirement under the Convention to abandon totally the power-sharing mechanisms peculiar to Bosnia and Herzegovina and...the time may still not be ripe for a political system which would be a simple reflection of majority rule,...there exist mechanisms of power-sharing which do not automatically lead to the total exclusion of representatives of the other communities [i.e. persons not belonging to one of the constituent peoples]". The Advisory Committee stresses in this respect the particular importance of ensuring both that this judgment is rapidly executed – in order for the relevant constitutional amendments to enter into force in time to apply to the 2014 elections – and that it is not executed in a way that would further entrench the segregation and division of the country. It moreover underlines that minorities should be able to participate effectively at all political levels, from the State to the local level (see further below, Article 15).

In this context the Advisory Committee notes with interest that on 30 January 2013, Sarajevo Canton unanimously approved amendments to its Constitution that will place "Others" on the same footing as the constituent peoples inasmuch as members of the cantonal assembly who do not identify themselves as Bosniacs, Croats or Serbs will henceforth be able to form a caucus of "Others" in the cantonal assembly and to appoint one vice-president of the assembly. The Advisory Committee observes that as these developments show, where the necessary political will is present, models can be found that do not exclude certain citizens on grounds of ethnic origin. It salutes this step forward in promoting the participation of all citizens of Bosnia and Herzegovina on an equal footing in political life and hopes that it may be expanded to other forms of access to public posts.

Recommendations

The Advisory Committee urges the authorities to move forward rapidly towards amending the Constitution and other relevant legal provisions so as to eliminate the exclusion of persons belonging to national minorities from running for presidential office and for office as a member of the House of Peoples of Bosnia and Herzegovina. It stresses the importance of adopting an approach that enhances the participation of all without further entrenching divisions and the need to ensure that the relevant amendments enter into force in time to apply to the 2014 elections for these offices.

Persons belonging to national minorities must be directly involved and adequately consulted in the process of amending the Constitution to respect their right to political participation.

Civil registration and access to identity documents, particularly for Roma

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee invited the authorities to 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.

Present situation

Considerable work has been done over the past few years towards ensuring that Roma do not lack identity documents. New legislation on birth registration was adopted in the Republika Srpska in 2009 and in the Federation in 2011. According to information provided by the authorities, research conducted several years ago showed that between 3 500 and 7 000 persons lacked identity papers; thanks to work carried out since then by the Ministry of Human Rights and Refugees together with UNICEF, UNHCR and other partners, the authorities consider that the process of registration is now largely completed, with only a few hundred people still lacking identity documents. A local NGO, *Vaša Prava*, continues to work with Roma communities to resolve the remaining cases.

While the Advisory Committee notes these encouraging developments with interest, it observes with concern that the absence of a free and universal birth registration system means that there are still a number of obstacles to birth registrations, in particular for children not born in hospitals, children living in remote areas, refugees and children belonging to minority groups, and that these problems are particularly acute for the Roma population. It was moreover particularly struck during its visit to Bosnia and Herzegovina by the fact that – despite the progress made in resolving cases of persons without ID – the lack of identity documents is still cited as one of the major causes of the Roma population's lack of access to other rights.

The Advisory Committee has also received reports that the refusal to recognise documents issued by the authorities in Kosovo* since the latter declared independence in 2008 is also creating serious difficulties in practice for some persons having ties to Kosovo*. It is concerned that these persons are placed in a situation of inequality that prevents them from enjoying rights to which they may be entitled under the Framework Convention.

Recommendations

The Advisory Committee encourages the authorities to complete the process of civil registration of Roma rapidly and to ensure in this context that all children born after the process was launched have also been registered. It furthermore calls on the authorities to introduce free and universal birth registration to ensure that especially vulnerable children – including children not born in hospitals, children living in remote areas, refugees and children belonging to minority groups – are in all cases able to be registered.

* 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.

The Advisory Committee also invites the authorities to clarify the situation of persons holding identity documents issued by the authorities in Kosovo* that have not been recognised by the authorities in Bosnia and Herzegovina.

Data collection

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee regretted the lack of up-to-date official information on the numbers of persons belonging to national minorities, in particular as this was an obstacle to the design, implementation and monitoring of policies to promote their full and effective equality, and recommended that the authorities pursue their efforts to collect comprehensive additional, up-to-date, reliable data, especially on persons belonging to national minorities, while ensuring full respect for personal data protection.

Present situation

The Advisory Committee notes with interest that amongst the measures taken in the context of the Decade of Roma Inclusion 2005-2015, the Ministry of Human Rights and Refugees in November 2009 launched an extensive process of recording the number of Roma throughout Bosnia and Herzegovina and creating a database of their needs. 4 318 Roma households and 16 762 Roma people were recorded in this exercise – around twice the number of persons who identified as Roma during the 1991 census. However, the authorities have also indicated that in some parts of the country a high proportion of Roma households did not wish to be recorded and that the data tends to show that there are approximately 25 000 to 30 000 Roma persons living in Bosnia and Herzegovina. Moreover, unofficial estimates as to the size of the Roma population presently living in the country, quoted by representatives of the authorities to the Advisory Committee during its visit, range from 55 000 to 70 000 or even 80 000 persons.

The Advisory Committee observes that this uncertainty as to the real number of Roma living in the country undermines the capacity of Bosnia and Herzegovina to assess the main challenges and specific measures needed to improve their access to rights. Moreover, the Advisory Committee notes with regret reports that the database set to record the needs of Roma in Bosnia and Herzegovina has never been fully developed to include information such as the health insurance, employment or property ownership status of the households covered. This limits its value as a tool to enhance the implementation of the Action Plans for Roma adopted as part of the Decade for Roma Inclusion (see further below, comments under Articles 12 and 15). The Advisory Committee is also concerned that no efforts have been made since its Second Opinion to evaluate the numbers and needs of other national minorities in the country. This lack of reliable data continues to pose an obstacle to the design, implementation and monitoring of policies to promote the full and effective equality of all persons belonging to national minorities in Bosnia and Herzegovina (see also above, Article 3, concerning the importance of remedying the problems related to self-identification in the census in order to ensure that the latter provides reliable results).

It also emphasises that – as the authorities' 2009 efforts to identify the number and needs of Roma persons indeed show – nothing requires the authorities to wait until the results of the census have been processed in order to take steps to assess the specific needs and demands of persons belonging to national minorities. It particularly stresses that independent research can

provide a vital source of data that can be analysed for the development of targeted measures designed to promote the full and effective equality of persons belonging to national minorities.

Recommendation

The Advisory Committee recommends that the authorities pursue and step up their efforts to collect comprehensive, up-to-date, reliable data on the specific needs of persons belonging to national minorities in Bosnia and Herzegovina, while fully ensuring the protection of personal data. It underlines that while the forthcoming census should provide scope for gathering such data, efforts to collect such information should not be seen as solely dependent on the successful implementation of the census: independent research data could also be used for this purpose.

6. Bulgaria

Opinion adopted on 11 February 2014

Article 4 of the Framework Convention

Legal and institutional protection against discrimination

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee recommended that the Commission for Protection against Discrimination be given the appropriate resources to allow it to fulfil its duties effectively and independently and to intensify its monitoring of alleged cases of discrimination. It also recommended that the authorities investigate and adequately sanction perpetrators of such acts and tackle vigorously any discriminatory practices affecting minorities, including through public awareness-raising campaigns and training programmes.

Present situation

The Advisory Committee notes with interest that the Commission for Protection against Discrimination, which began its second term of office – after a significant delay in the appointment of its members – in 2012, has continued to deal with individual complaints of racial and ethnic discrimination and has carried out awareness-raising activities on discrimination at national and local levels. It has also expanded its network of regional representatives, with representatives now operating in approximately 20 of the 28 district capitals in Bulgaria. The number of complaints submitted annually to the Commission has risen to over 800 per year, with the proportion of these complaints concerning allegations of discrimination on racial or ethnic grounds varying from 2.5% in 2009 to 12% in 2012. However, the Advisory Committee observes that issues faced by persons belonging to national minorities do not appear to be high on the agenda of the Commission. It notes with regret that the latter did not appear during its discussions with the Advisory Committee to be closely attuned to the specific vulnerabilities of persons belonging to national minorities or to the need to take adequate measures – going beyond merely guaranteeing formal equality – to promote the full and effective equality of persons belonging to national minorities, in accordance with Article 4.2 of the Framework Convention and Article 7(1)(14) of the Antidiscrimination Act.

The nine members of the Commission are appointed by Parliament (five members) and the President (four members). While the continuity achieved through the 2012 reappointment as members of the Commission of its former Chair and Deputy Chair is welcome, the Advisory

Committee notes that concerns have been voiced about the lack of a sufficiently clear, transparent and participatory selection process for Commission members that would promote the independence of the Commission and public confidence therein. The Commission's 2012 annual report has moreover still not been debated by the Parliament, in part due to the dissolution of the latter for early elections held in May 2013. At the time of adoption of the present Opinion (February 2014), the examination of the report was still pending before the Parliament and the report regrettably remained unpublished.

The Advisory Committee is concerned that the application of budget cuts to the Commission in the context of general austerity measures, combined with the introduction of a new and costly duty for the Commission to promote antidiscrimination standards through the mass media, mean that it has become more difficult for the Commission to fulfil its tasks effectively in recent years. While the Advisory Committee recognises that in times of economic crisis governments may be under pressure to cut spending across the board, it also underlines that at such times, human rights bodies have an especially important role to play in protecting the rights of persons most at risk of social exclusion, many of whom may be persons belonging to national minorities. Against this background, it welcomes the information received during its visit that in its first reading of the 2014 budget on 14 November 2013, the Parliament decided to increase the Commission's annual budget from BGN 1.8 million (approximately EUR 900 000) to BGN 2 million (EUR 1 million).

The Advisory Committee observes that in order to ensure the effective implementation of antidiscrimination legislation in Bulgaria it is crucial at all times, and even more so at a time when the composition of the Commission has recently changed, that the quality of its decisions be of the highest standard, and that where these decisions are subject to scrutiny by the courts, the latter's judgments also meet the highest standards. It is therefore particularly important that the authorities continue to deliver training on antidiscrimination legislation to judges, prosecutors, investigators and other members of the legal profession, and indeed intensify their efforts in this respect.

As an independent institution responsible for handling complaints of violations of individuals' rights and freedoms by public authorities, the Ombudsman has also received rising numbers of complaints in recent years, and expected to receive more than 6 500 complaints in 2013. In this context, the Ombudsman has dealt with a number of complaints since 2010 from persons belonging to national minorities, notably Roma, with respect inter alia to the issuance of identity papers, access to adequate education, access to adequate housing and hate speech in the media. The Advisory Committee notes that in 2012, the Ombudsman was designated as the national preventive mechanism under the Optional Protocol to the UN Convention against Torture; however, despite this expansion of its competences, the budget of the Ombudsman, like that of the Commission for Protection against Discrimination, was decreased in 2013. Concerns have also been voiced about the lack of a sufficiently clear, transparent and participatory selection process for the Ombudsman.

Recommendations

The Advisory Committee calls on the authorities to strengthen the recruitment procedures for the members of the Commission for Protection against Discrimination and for the Ombudsman in order inter alia to increase the transparency of these procedures at all stages and widen the circle

of potential candidates. It encourages the Commission for Protection against Discrimination and the Ombudsman to take effectively into account the concerns and rights of persons belonging to national minorities and calls on the authorities to ensure that these institutions have adequate resources for this purpose.

It further recommends that the authorities intensify the provision of initial and in-service training on antidiscrimination law to judges, prosecutors, investigators and other members of the legal profession, including those working for the Commission for Protection against Discrimination, in order to ensure that this legislation is properly and consistently applied throughout Bulgaria. Such training should also cover aspects of antidiscrimination related to adequate measures to promote the full and effective equality of persons belonging to national minorities.

Promotion of full and effective equality of Roma

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee urged the authorities to increase efforts to develop and implement policies to address the problems confronting the Roma regarding access to social rights and allocate adequate resources to this effect.

Present situation

In 2010, the Bulgarian government approved a Framework Programme for Integration of Roma in Bulgarian Society 2010-2020 and a Strategy for Educational Integration of Children and Pupils from Ethnic Minorities. Following the 2011 EU initiative to strengthen national strategies for Roma inclusion, the National Roma Integration Strategy of the Republic of Bulgaria (2012-2020) was then developed, on the basis of the 2010 Framework Programme, by an inter-institutional working group of experts from the relevant government institutions and civil society organisations. A review of the implementation of action plans developed previously, notably as part of the Decade for Roma Inclusion (2005-2015), was also carried out, with a view to using the results to improve the effectiveness of the relevant activities.

The authorities have indicated that in 2012, the NCCEI began working with regions and municipalities to create strategies specific to each region of Bulgaria and action plans at the level of each municipality. The Advisory Committee notes with interest that as of mid-November 2013, regional strategies had been developed for 27 of the 28 regions in Bulgaria and action plans for 220 out of 264 municipalities. However, it is deeply concerned that according to the authorities, these action plans are not currently funded: the NCCEI's role is one of coordination and consultation, and it is up to each individual ministry to provide the budget necessary to achieve the results falling within its remit. The Advisory Committee observes that funding is evidently required in order to achieve improvements in access to housing, health and other social rights and promote the full and effective equality of Roma. There is furthermore a real risk of disenchantment and disengagement amongst both the authorities and Roma if the efforts invested in drawing up tailored strategies and action plans at national, regional and municipal levels lead to no amelioration in practice.

Attention also needs to be paid to the misgivings expressed by numerous Roma representatives as regards the designation of the intended beneficiaries of the above strategies and action plans. The Strategy document begins by stating that "the term Roma is used in this document as an umbrella,

which includes both Bulgarian citizens in a vulnerable socio-economic condition who identify themselves as Roma, and citizens in a similar situation, defined by the majority as Roma, regardless of their self-identification". As Roma representatives have pointed out, this is problematic for two main reasons: first, the opening part implies that there are no Roma who are in anything other than a vulnerable socio-economic situation, and the second part of the definition is in clear conflict with the requirement of voluntary self-identification. The Advisory Committee accepts that the intention of the second part of the definition was to ensure that Roma who (for whatever reason) do not choose to identify as such are not prevented from benefitting from the measures taken. However, the formulation chosen to convey this – which allows the majority to define individuals' ethnic affiliation irrespective of the latter's wishes – raises clear problems from the point of view of the Framework Convention. As regards the first part of the definition, the Advisory Committee shares the view that, by implying that unless one is poor, one is not a Roma, it sends a highly damaging message to other members of Bulgarian society, which moreover risks being instrumentalised in harmful ways in political debates (see further below, comments under Article 6 with respect to discourse about Roma and under Article 15 with respect to the socio-economic situation of Roma). The Advisory Committee is convinced that neither of these results was intended by the authors of the Strategy. However, it considers that the negative impact of the messages sent is such that revision of this part of the document, or at the very least official clarification of its intended meaning, is needed.

Recommendations

The Advisory Committee strongly recommends that the authorities regularly evaluate and review the implementation of the various strategies and action plans for the integration of Roma, in close consultation with representatives of this community, with a view to assessing their impact in promoting the full and effective equality of Roma and strengthening them wherever necessary. It also urges the authorities at all levels rapidly to make specific budgetary provision for the implementation of the current national, regional and municipal strategies and action plans for the integration of Roma.

The Advisory Committee further calls on the authorities to revise the definition of the beneficiaries of the National Roma Integration Strategy of the Republic of Bulgaria (2012-2020) and all other strategies and action plans that have reproduced this definition, in order to make clear that the measures they include explicitly target Roma but are also accessible to other persons who need them although not expressly self-identifying as Roma.

Collection of equality data disaggregated by ethnicity

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called upon the authorities to identify further ways and means of obtaining and publishing reliable data disaggregated by ethnicity, gender and geographical location.

Present situation

The authorities have indicated that aside from the official data disaggregated by ethnicity collected during the census, there is no general practice of collecting data on the implementation of government policies broken down by ethnic affiliation. In view of the questions remaining as a result of the 2011 census (see comments under Article 3 above) it would be important to broaden

available data on the needs and situation of persons belonging to minorities with the help of other forms of data collection such as surveys and studies from a variety of sources. The Advisory Committee received numerous accounts from representatives of the Turkish minority of difficulties in gaining access to adequately remunerated employment and of underrepresentation in public employment, even in areas where the Turkish minority constitutes a substantial proportion of the population. Similar discrimination in access to employment is also experienced by the Roma (see further below, comments under Article 15). The Advisory Committee observes that research carried out into the implementation of specific policies and measures – such as the employment of around 200 Roma labour mediators – may provide valuable and more comprehensive information as to the situation of different groups in different fields, which could be used to evaluate and increase the effectiveness of such policies and measures.

Recommendation

The Advisory Committee recommends that the authorities expand existing practices and identify additional means of obtaining and publishing reliable data disaggregated by ethnicity, gender and geographical location, in order to increase the impact and efficacy of efforts to promote the full and effective equality of persons belonging to national minorities. Such data could include detailed information on discrimination against persons belonging to national minorities in the field of employment as well as on the impact of measures taken to address such issues.

7. Croatia

Opinion adopted on 27 May 2010

Article 4 of the Framework Convention

Legislative developments in the field of combating discrimination

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee called on the authorities to develop anti-discrimination legislation in key fields such as education and housing.

Present situation

The Advisory Committee welcomes the adoption of the Discrimination Prevention Act in July 2008 (in force as from 1 January 2009) which reflects the standards set in the European Council Directive on Racial Equality (2000/43/EC) and the European Council Directive on Employment Equality (2000/78/EC) and provides a clear legal basis for the protection against discrimination, including in the field of employment. The Act provides protection and prohibits discrimination (among others) on racial, ethnic, national or religious grounds and establishes municipal and commercial courts' jurisdiction. The Advisory Committee notes in particular the shifting of the burden of proof and the provision allowing third-parties to intervene as *amicus curiae* in cases of discrimination.

In 2006, an amendment to the Criminal Code was adopted, qualifying racial hatred motivating a crime as an aggravating circumstance. According to the information contained in the State Report, articles 106 and 174 of the Criminal Code provide for the sanctioning of discrimination on any grounds whatsoever. However, the wording of these legal provisions is such that it is not possible to keep records of the crimes committed on the basis of specific grounds of discrimination.

The Advisory Committee notes the adoption in August 2008 of the National Anti-Discrimination Plan for the period 2008-2013 and an action plan for its implementation. These plans set important goals for resolving problems of refugees belonging to the Serbian national minority as well as monitoring of representation of members of national minorities in line with the Constitutional Act on the Rights of National Minorities, the State Administration System Act and Local and Regional Self-Government Act. The plans also aim to monitor the adoption and implementation of employment schemes for persons who, under special regulations, are entitled to priority in employment, including members of national minorities and the adoption of specific measures targeting the Roma population. These measures include the training of civil servants on the rights of national minorities and prohibition of discrimination, the training of Roma representatives, especially of Roma women and young persons, to enable them to participate in the decision-making process and exercise their rights and increase their involvement in the life of society and research on the employment of the Roma with particular emphasis on the employment of Roma women.

Numerous interlocutors representing national minorities and civil society informed the Advisory Committee about cases of continued discrimination of persons belonging to the Serbian minority and the Roma in the fields of education, employment, housing, recognition of property and other acquired rights, reconstruction of housing units damaged during the war, sustainability of returns, access to health care and social protection.

In particular, in the field of employment, the manner in which Article 22 of the Constitutional Act on the Rights of National Minorities is applied gives rise to serious concern. This article establishes the right to proportional representation of persons belonging to national minorities in public administration, the judiciary, local government and public enterprises. Persons belonging to national minorities wishing to exercise this right are required however to ask expressly in a statement for their ethnicity be taken into consideration when the vacancy is filled. The Advisory Committee heard of a number of cases where this statement subsequently was used against the applicant, despite clear underrepresentation of the national minority concerned. Vacancies were suddenly withdrawn, job criteria subsequently altered, or simply the ethnicity of the candidate was not taken into account.

Recommendations

The Advisory Committee calls on the authorities to review the procedures applied to implement Article 22 of the Constitutional Act on the Rights of National Minorities, in order to carry out stricter monitoring and apply sanctions where appropriate, to make the implementation of this provision full and effective, including at local level.

The Advisory Committee urges the authorities to review the methodology and the criteria used for keeping records of committed crimes in order to record crimes according to specific grounds of discrimination.

Repossession of property

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to complete the processing of pending repossession cases within the set deadlines and address

discriminatory attitudes that were still prevalent, particularly with regard to cases of looting and claims for damages.

Present situation

The Advisory Committee welcomes that the vast majority of previously occupied private properties have been repossessed with only 22 cases still pending a court decision in May 2010. The Advisory Committee also notes that the long-standing issue of occupied agricultural land near Zadar was finally resolved and welcomes the fact that the majority of applications for reconstruction of housing has also been processed, although some 8,000 applications are still pending.

Considering that relevant deadlines were repeatedly extended, the Advisory Committee expects that pending cases will be resolved without further delay. It notes with concern that considerable differences in views persist in some cases as regards the so-called unsolicited investments and that such cases have allegedly been handled with some ethnic bias.

Recommendation

The Advisory Committee strongly encourages the authorities to process all pending cases concerning the repossession and reconstruction of private property without delay and without any discrimination. The Advisory Committee calls in this context on the authorities to provide adequate resources to the courts to deal effectively with the pending cases.

Former tenancy rights holders

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee urged the authorities to pay attention to the problems faced by the former tenancy rights holders belonging to a national minority (mainly Serbian) and to ensure that they benefit from the provision of adequate housing ("Housing Care Programme") on the same basis as the majority population. It further recommended particular care to guarantee that each case be examined carefully and in a non-discriminatory manner by the relevant domestic instances.

Present situation

The Advisory Committee welcomes the fact that the Housing Care Programme has been implemented for minority returnees as of 2006, providing housing solutions for former tenancy/occupancy rights holders of all ethnicities, and that government targets of housing units to be allocated have seen a full and complete implementation rate in 2007.

The Advisory Committee, however, regrets the lack of transparency surrounding the implementation rates in 2008 and 2009 when targets for the allocation of housing units were not met and continues to be concerned about the considerable number of unresolved cases particularly of former tenancy/occupancy right holders in the urban areas inhabited by a substantial number of persons belonging to the Serbian minority.

Recommendation

The Advisory Committee urges the authorities to ensure that the processing of cases and allocation of housing units progresses without delay and without any discrimination as the delays

in dealing with the restitution of tenancy/occupancy rights have a strong negative impact on the overall climate for sustainable minority return.

Office of the Ombudsman

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee considered that the Office of the Ombudsman merited increased support.

Present situation

The Discrimination Prevention Act of 2008 transferred the authority for the implementation of the Act to the Office of the Ombudsman, thus making the Office the main human rights protection institution with an emphasis on human rights promotion, along with the remit to receive and respond to citizens' complaints. It is of particular importance that the Act gives the Office of the Ombudsman the right to initiate civil and criminal proceedings in discrimination cases.

In 2009, which was the first year of the implementation of the Act, the Office of the Ombudsman received 172 complaints about discrimination. 31% of these complaints alleged discrimination based on belonging to a national minority. These complaints ranged from discrimination in the workplace, and employment, decisions in administrative cases (reconstruction and housing provision), residence, citizenship, and access to public goods and services.

The Office of the Ombudsman, in addition to fulfilling its primary monitoring role, also developed in co-operation with the Judicial Academy an awareness-raising programme for judges and lawyers, to familiarise them with issues raised in discrimination complaints and the relevant jurisprudence of the European Court of Human Rights. The Office further organised a public awareness campaign targeting in particular the Roma on discrimination issues, aimed at informing them about the Ombudsman's new role, and familiarising the public with the existing possibilities of seeking redress in cases of discrimination. The Advisory Committee is deeply concerned about the continued impunity of perpetrators of ethnically-motivated incidents, particularly against persons of Serbian and Roma origin (see Article 6, paragraph 111). In this context, the Advisory Committee expresses its strong support to the activities of the Ombudsman Office.

The Advisory Committee notes with regret that the Report of the Ombudsman's Office was merely noted by the Croatian Parliament but not approved or otherwise supported. The Committee was also informed that the available funding and human resources are inadequate to handle the growing workload of the Office.

Recommendation

The Advisory Committee urges the authorities to provide the Office of the Ombudsman with the appropriate financial and human resources, in order to allow it to fulfil its duties effectively and independently.

Citizenship

Recommendations from the two previous cycles of monitoring

In the previous two cycles of monitoring, the Advisory Committee urged the authorities to ensure that persons belonging to national minorities have access to citizenship and thus to the enjoyment of basic rights in the Republic of Croatia.

Present situation

The current Law on Citizenship and its application in practice still create significant obstacles to persons belonging to national minorities, particularly elderly Serbian returnees, Bosniaks and the Roma, in accessing citizenship. Their lack of clear citizenship status continues to make these persons particularly vulnerable to discrimination in all spheres of life and prevents them from enjoying the rights guaranteed by the Constitutional Act on the Rights of National Minorities which is only applicable to citizens (see also related comment in paragraph 43 *et seq.*). The Advisory Committee further considers it a matter of unequal treatment that simplified procedures for the acquisition of citizenship are still only available to ethnic Croats, as is the eligibility for dual citizenship. The Advisory Committee considers that such discrimination in access to dual citizenship is not compatible with Article 4 of the Framework Convention.

The authorities have taken measures within the framework of the National Action Plan for Roma to address the obstacles for Roma to access citizenship linked to the requirement of language and in particular Latin script proficiency, such as awareness raising efforts on the applicable rules. However, as of today, the necessity to prove an adequate proficiency in using Latin script still inhibits the access of long-term Roma residents to acquiring citizenship or, on occasions, to acquiring residence permits (see also related comment under Article 3 paragraph 43).

The Advisory Committee was made aware of cases where Roma children were not granted access to school because of their lack of a regularised status. It notes in this context the ongoing efforts of United Nations High Commissioner on Refugees as well as the Ombudsman Office to solve issues of regularisation of the status of Roma.

Recommendations

The Advisory Committee urges the authorities to discontinue the unequal treatment of persons belonging to national minorities when it comes to access to simplified procedures and dual citizenship which are currently only available to ethnic Croats, including those living abroad.

The Advisory Committee calls on the authorities to redouble their efforts related to the regularisation of Roma and to ensure that the current administrative framework does not unduly hinder members of the Roma community from accessing basic rights, including access to education.

Situation of Roma

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee called on the authorities to provide adequate support, financial and other, for 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 infrastructures on a non-discriminatory basis.

Present situation

The Advisory Committee notes that for some years the authorities have increased efforts to combat discrimination and integrate Roma into society. In 2003, the National Programme for Roma was adopted, followed later by the National Action Plan for the Decade of Roma Inclusion

2005-2015, which laid down a set of tasks geared to equal treatment in the area of education, employment, housing and access to health care.

Nevertheless, the Advisory Committee notes with regret that Roma continue to face persistent discrimination and difficulties in different sectors, in particular in employment, education and housing.

The Advisory Committee welcomes the information provided by representatives of civil society that the National Action Plan has already yielded some results, especially through increased inclusion of Roma children into the educational system (from the preschool to higher-level educational institutions), improved access to healthcare for the Roma population, and sustained efforts to resolve housing issues. There is agreement, however, that it remains extremely difficult for the Roma to obtain employment (see also related comment under Article 15).

The Advisory Committee is deeply concerned about the living conditions in some Roma settlements in the municipality of Zagreb which the delegation of the Advisory Committee visited and witnessed. The inhabitants of these settlements face most deplorable living conditions, without proper roofing, electricity, running water, sewage treatment, and roads (see also related comment under Article_15).

Recommendations

The Advisory Committee strongly urges the authorities to exert more efforts to prevent, to combat and to sanction the inequality and discrimination suffered consistently by the Roma. The authorities must step up their efforts, in particular at local level, to improve the living conditions of Roma and to promote their integration into society.

The authorities should thoroughly investigate any complaint of alleged discrimination of Roma in access to employment and provision of public goods and services. If discriminatory acts are established, the perpetrators must be adequately sanctioned.

8. Cyprus

Opinion adopted on 19 March 2010

Article 4 of the Framework Convention

Legal and institutional framework for combating discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to supplement the legal framework for protection against discrimination in order to prohibit discrimination in all fields and make effective remedies available to potential victims. It also invited the authorities to do more to raise awareness and provide information concerning the principles of non-discrimination and equality.

The authorities were encouraged to make additional resources - technical, financial and human - available to the Office of the Ombudsman to strengthen its institutional capacity and ensure the operational independence and effectiveness of the new institutions established under its aegis. They were also encouraged not to delay in setting up a national human rights institution based on the Paris Principles and to provide it with the human and financial resources required for its proper functioning.

Present situation

The Advisory Committee welcomes the authorities' efforts to improve information and awareness about the principles of equality and non-discrimination as well as tolerance and intercultural dialogue. It notes that a National Action Plan on Gender Equality for 2007-2013, aimed *inter alia* at promoting equal participation of men and women in social, economic and political life, is currently being implemented in the various sectors of concern and that the position of Children's Commissioner has been established.

Various actions have been taken to inform the population about the remedies available to combat discrimination and, in particular, the powers of the Office of the Ombudsman in this field. The Advisory Committee notes that in Cyprus the Ombudsman Office includes two separate departments which fulfil both the tasks of an anti-discrimination body and of an equality authority. The Advisory Committee nevertheless would like to stress that increased clarity with regard to the distribution of tasks between the two units and the various departments within the Office would be beneficial to these bodies' effectiveness and transparency. In the Office's opinion, additional resources are needed if it is to perform its task efficiently and, further, that its powers

do not include the possibility of initiating procedures and representing victims of discrimination in the courts.

The Advisory Committee notes with interest the increase in the number of complaints to the Anti-discrimination body concerning acts of discrimination based on the victim's ethnic origin (214 according to the 2008 annual report, and 125 out of 157 complaints according to the 2007 Annual Report, as against 61 in 2004), an increase which the authorities attribute mainly to more awareness-raising with regard to discrimination. Whilst the efforts in this field are appreciable, the Advisory Committee believes that this situation also reflects the existence of instances of discrimination and discriminatory attitudes - attitudes which have been reported to it from various sources. It considers that awareness-raising campaigns should be continued and increased, and the use of complaints mechanisms by victims of discrimination encouraged.

As regards case-law, it is reported that the cases involving discrimination are not classified as such in the courts' data bases, which makes it very difficult to obtain a clear view of the number of cases of discrimination which have been brought before the Cypriot courts. According to an expert report, several years after the entry into force of the anti-discrimination legislative framework established in 2004, reportedly only one case invoking anti-discrimination provisions had been submitted to courts. The Advisory Committee notes that in addition to raising public awareness, it is imperative to intensify training on anti-racist and anti-discrimination law within specific target groups, including the judiciary. The Advisory Committee notes that, before July 2006, measures taken in favour of groups more exposed to discrimination were interpreted by Cypriot courts as contrary to the antidiscrimination provisions of Article 28 of the Constitution, and thus as discriminatory and contrary to the equality principle as guaranteed by the Constitution. The Advisory Committee regrets that certain representatives of the authorities continue to make reference to this earlier court interpretation when the adoption of positive measures in respect of certain groups is envisaged. The Advisory Committee points out that, in accordance with Art. 4.3 of the Framework Convention as well as under international and EU law, positive measures which are put in place temporarily to counter past or present discriminatory effects, shall not be considered to be an act of discrimination.

The Advisory Committee notes with interest the Ombudsperson's focus on the impact of religious identity on intercultural relations within society and the implementation of the equality principle in this regard. According to information from her Office, religious affiliation is a key aspect of Cypriot society and puts people who do not share the majority religion at a disadvantage. By way of example, a national survey of majority attitudes to persons with a different religious affiliation, published in June 2008, shows that half of these persons believe that, because of their different religion, they are less likely to be offered a job.

The Advisory Committee has taken note with interest of the recommendations issued by the Office of the Ombudsperson on ways to tackle discrimination and difficulties faced by persons belonging to more vulnerable groups. It notes in particular that, in May 2009, the Equality Authority has stated that, in order to implement the right of the Maronites to education in accordance to the specific needs of this group, positive measures are necessary. In its decision, the Equality Authority has made reference, *inter alia*, to Article 4 of the Framework Convention.

The Advisory Committee notes that the National Human Rights Institution set up a few years ago is encountering organisational problems. It nevertheless welcomes the fact that the authorities are

currently seeking the best ways to ensure that it can operate independently in full accord with the Paris Principles.

Recommendations

The Advisory Committee encourages the authorities to strengthen their support to the Ombudsperson, including by providing the human and financial resources needed to enable her Office to fulfil effectively and independently its complex responsibilities in combating discrimination and in other fields. Similarly, they should ensure that the National Human Rights Institution is operational and in full accordance with the Paris Principles.

The authorities should step up their awareness-raising and training work with regard to prevention of discrimination and to the relevant anti-discrimination legislation, including activities targeting members of the judiciary, the police force and legal practitioners.

The authorities should also increase awareness-raising on the adoption of positive measures and their importance in ensuring effective equality in respect of all.

9. Czech Republic

Opinion adopted on 1 July 2011

Article 4 of the Framework Convention

Legal and institutional protection against discrimination

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities 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.

The Advisory Committee also called on the authorities to provide additional support for the Ombudsman institution and to ensure that the Ombudsman's recommendations were followed up by the competent institutions.

Present situation

The Advisory Committee welcomes the adoption of the Anti-Discrimination Act in June 2009 (in force as from 1 September 2009) which transposed into Czech legislation the European Council Directive on Racial Equality (2000/43/EC) and the European Council Directive on Employment Equality (2000/78/EC). The act provides an adequate legal basis for protection against discrimination, including in the field of employment (among others) on racial, ethnic, national or religious grounds and establishes courts' jurisdiction in alleged cases of discrimination. The Advisory Committee welcomes in particular the shifting of the burden of proof in cases of indirect discrimination and the provision enlarging the scope of application of the law to private relations, thus including also horizontal effects into non-discrimination law. The Advisory Committee also notes in this context that the legislation introduced the office of the Public Defender of Rights as the body charged with assisting victims of discrimination including in the private law sphere.

The Advisory Committee welcomes the establishment of the Office of the Government Commissioner for Human Rights and the recent filling of the post. The Commissioner has been empowered to evaluate the situation and set standards regarding the protection of human rights, review legislation and draw up national proposals for the development of human rights protection in the Czech Republic. The Advisory Committee also notes that one of the principal tasks of the Commissioner is to collect information and draw up proposals to promote the observance of human rights of the Roma and to improve the situation of Roma communities in society.

The Advisory Committee notes with satisfaction that the Office of the Public Defender of Rights (Ombudsman) plays an active role in monitoring the protection of human rights in the country and it receives a substantial number of complaints. In 2010, it handled 6,339 complaints, and began 724 investigations. The Advisory Committee notes that these complaints concerned a large variety of issues including a small number of complaints alleging discrimination on ethnic grounds. It finds it worrying, however, that recommendations made by the Public Defender for remedial action addressed to offices in cases of identified malpractice were not always followed. In 17 cases handled in 2010, the office did not rectify its mistakes even after a final statement had been issued by the Defender.

Recommendations

The Advisory Committee urges the authorities to support appropriately the newly established Office of the Government Commissioner for Human Rights, in order to allow it to fulfil its duties effectively.

The Advisory Committee calls on the authorities to ensure that the Office of the Public Defender of Rights is granted all the support it needs to continue carrying out its role effectively, in particular as regards the enforcement of the Defender's recommendations.

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

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee strongly encouraged the authorities to consider setting-up of a special agency to combat social exclusion. The Advisory Committee also asked the authorities to pursue and expand the sectoral measures aiming to improve the situation of Roma, in particular in the field of housing and employment.

It further urged the authorities to look into the causes of inadequate implementation of the government policy for the Roma integration at local level and to verify whether legislative or other measures were needed to define more exactly the role and responsibilities of local authorities in areas affecting national minorities.

Present situation

The Advisory Committee welcomes the fact that the authorities have increased their efforts in recent years to combat discrimination and implement policies for Roma inclusion into the mainstream society. The Agency for Social Inclusion of Roma Localities was established in 2008 with the principal task of implementing local social inclusion projects and promoting partnership between the Roma and local authorities. Since 2008, the Agency has been implementing 28 projects with another 10 projects planned for 2011. However, the Advisory Committee notes that,

according to Roma representatives, the inclusion of Roma in the activities of the Agency has until now not reached the desirable level.

The Advisory Committee welcomes the adoption and implementation of the Roma Integration Concept for 2010-2013. The Concept covers the key areas of employment, health, housing, social protection, education, support for Roma culture and language, personal security and over-indebtedness. In particular, the Advisory Committee is pleased to learn that the different government agencies have been assigned specific tasks and the authorities are monitoring the progress on their implementation. The most recent assessment of the situation of Roma communities, entitled *Report on the Position of Roma Communities in the Czech Republic* of 2009, was approved by the government on 14 June 2010 and is available on the government website.

The Advisory Committee regrets, however, that in spite of the progress registered thus far, the Roma continue to face serious difficulties and discrimination, in particular as regards access to employment, health-services, main-stream and higher education, housing segregation, eviction of Roma families from town centres, widespread anti-Gypsyism, and hate speech. The Advisory Committee deplores in particular repeated violent clashes provoked by far right extremist and neo-Nazi groups aiming to intimidate the local Roma, such as the 2008 riot in Litvinov or clashes after rallies of the extremist Workers' Party of Social Justice (DSSS) in the towns of Nový Bydžov in March 2011 and in Krupka in April 2011. The Advisory Committee also is concerned about reports, including that of the Public Defender of Rights, of evictions in the town of Vsetín of Roma families from the town centre to container-like houses on the town's fringes and to surrounding villages.

Another issue of serious concern is repeated stigmatisation of the Roma in the media and by the local politicians, leading to dissemination of prejudices and perpetuation of social exclusion patterns of Roma in society. Consequently, according to information obtained from Roma representatives, negative attitudes towards the Roma prevail in the majority society, with 86% of those surveyed rejecting Roma people, demanding that they be segregated, and calling for repressive measures against them (see also related comments under Article 6 below).

Recommendations

The authorities must make more comprehensive and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by the Roma, and to promote tolerance and anti-discriminatory attitudes throughout the majority population.

The authorities must step up their efforts, in particular at local level, to improve the employment opportunities and living conditions of Roma, to include Roma in all projects and activities concerning them and to promote their integration into society. Particular attention must be paid to improving housing conditions in Roma neighbourhoods.

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

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee urged the authorities to investigate allegations concerning the sterilisation of Roma women without their prior free and informed consent in optimum conditions of transparency, independence and impartiality by the special commission of enquiry established by the Ministry of Health. It further asked that more

comprehensive regulations be adopted, in compliance with relevant international standards, in order to define prior free and informed consent with sufficient clarity.

Present situation

The Advisory Committee notes the public statement of regret made in November 2009 by the Czech government, officially apologising for the sterilisation of Roma women without their prior free and informed consent. This apology followed the 2005 report of the enquiry of the Public Defender of Rights and the findings of the Advisory Board of the Ministry of Health of 2006 which both established the illegality of the practice.

The Advisory Committee notes further that subsequent legislation, adopted in 2007, amended provisions on prior free and informed consent. The Advisory Committee notes also that in a recent decision, the Constitutional Court held that a three-year statute of limitations for bringing compensation claims cannot be applied to restrict patients' rights in cases of medical malpractice. Considering the long period that most victims of such a gross violation of human rights have been waiting for compensation, the Advisory Committee expects that pending cases will be resolved without further delay.

Recommendation

The Advisory Committee strongly urges the authorities to resolve without further delay all pending compensation cases brought by the victims of sterilisation without prior free and informed consent. In addition, the Advisory Committee urges the authorities to continue to ensure that legal provisions on prior informed consent are adhered to at all times.

10. Denmark

Opinion adopted on 31 March 2011

Article 4 of the Framework Convention

Anti-discrimination legislation and Board for Equal Treatment

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to assess the effectiveness of the 2003 Act on Ethnic Equal Treatment and to ensure that citizens who suffer discrimination have access to effective remedies.

Present situation

The Advisory Committee notes that the monitoring of the 2003 Act on Ethnic Equal Treatment, which transposed into Danish law the European Council's Directive 43/2000 of 29 June 2000 on equal treatment between persons irrespective of racial or ethnic origin, is now the responsibility of a new body, the Board for Equal Treatment. This body has replaced the former Complaints Committee and has also taken on a number of functions formerly performed by the Danish Institute for Human Rights. The Board for Equal Treatment is responsible for examining complaints from anyone considering himself/herself to be a victim of discrimination. Its decisions are legally

binding and it can award the victim compensation. If the perpetrator of the discrimination fails to comply with its decision, he/she can bring the matter before the courts.

The Advisory Committee notes that the number of complaints of discrimination based on ethnic origin is still low, even though it has risen slightly in the last few years. Over the 2006-2008 period, the former Complaints Committee received 134 complaints and carried out 27 investigations on its own instigation. Of the 50 complaints that gave rise to a decision, a violation of the principle of non-discrimination was found in 11 cases – in one instance on the grounds of race or ethnic origin. Since the Board for Equal Treatment took up its duties on 1 January 2009, 30 out of the 200 complaints registered have related to discrimination on the grounds of race or ethnic origin. The Board found violations in five cases. According to the persons whom the Advisory Committee met during its visit, the statistics do not necessarily reflect an increase in discrimination in the country but, rather, a greater awareness of the Board's existence and role, which is prompting more persons to contact it.

However, despite all their efforts, the authorities are aware that there is still a feeling among certain population groups that they are discriminated against. The authorities claim it is difficult to measure the extent of discrimination precisely as the number of cases recorded does not reflect reality, since not all cases of discrimination give rise to a complaint. The Government has consequently launched a new research project to draw up a detailed discrimination chart that, in addition to substantiated cases of discrimination or intolerance, will take into account the general impression of persons confronted with such situations.

Despite the efforts made by the Board for Equal Treatment in its first year of operation (campaigns in the media and on public transport, the launch of a website and a newsletter), the Advisory Committee is concerned about the inadequacy of the Board's resources. As virtually its entire budget is devoted to the examination of complaints, it does not have the means to develop its visibility outside Copenhagen, especially by setting up regional or local branches. Given the importance of this body, the Advisory Committee considers that the authorities should make additional efforts to support it in the pursuit of its activities.

Reports which have reached the Advisory Committee seem to indicate that persons belonging to the Roma community, who consider themselves victims of discriminatory acts, are reluctant to initiate proceedings before the Board for Equal Treatment, as they do not have full confidence in this body. In addition, the Advisory Committee notes with concern that this attitude seems to indicate that those most exposed to discrimination are unaware of the means available to them to assert their rights. The Advisory Committee considers that attention should be drawn to the work of the Board for Equal Treatment through awareness-raising campaigns targeting society at large and especially the groups most at risk of being victims of discrimination.

Recommendations

The Advisory Committee calls on the authorities to step up their efforts to raise public awareness of the 2003 Act on Ethnic Equal Treatment among all ethnic groups and of the work of the Board for Equal Treatment among the population as a whole. Additional human and financial resources should also be allocated to the Board for Equal Treatment.

The Advisory Committee urges the authorities to pay particular attention to persons most at risk of discrimination so as to enable them to be fully informed about their rights and the remedies available.

Danish Institute for Human Rights

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee considered that the Government should keep under review the financial resources of the Danish Institute for Human Rights in view of its important and growing tasks.

Present situation

The Advisory Committee welcomes the fact that the Danish Institute for Human Rights continues to be the body responsible for promoting non-discrimination, helping victims who wish to lodge a complaint with the Board for Equal Treatment or the courts, conducting research and submitting recommendations to the Government.

During the visit, the Advisory Committee was informed that the Institute for Human Rights was suffering from a lack of visibility among the population and from insufficient funds to carry out the tasks assigned to it. The Advisory Committee has also noted the fears expressed by those responsible for managing the Institute, given that the general budgetary constraints with which the Government has to contend, could have a negative impact on the Institute's next annual budget. Based on information received after its visit, the Advisory Committee notes that a special appropriation, for 2011-2012, of DKK 6 million has been attributed to the Institute in support of the four non-discrimination criteria, namely gender, disability, ethnicity and race.

Recommendation

The Advisory Committee invites the authorities to ensure that the Danish Institute for Human Rights continues to have sufficient resources at its disposal to carry out its tasks. It also encourages the authorities to ensure increased visibility to the work of the Institute.

11. Estonia

Opinion adopted on 1 April 2011

Article 4 of the Framework Convention

Legislative developments in the field of discrimination

Recommendations of the two previous monitoring cycles

In the previous cycles of monitoring, the Advisory Committee called on the authorities to adopt new anti-discrimination legislation and ensure that adequate legal safeguards and procedures were in place also in respect of discrimination on the basis of citizenship.

Present situation

The Advisory Committee welcomes the adoption of the Equal Treatment Act in December of 2008 and its subsequent entry into force on 1 January 2009. It notes that the act transposes European Union Council Directives 2000/43/EC and 2000/78/EC and, consequently, provides protection from discrimination on the grounds of nationality, race, colour, religion or other beliefs, age, disability

and sexual orientation, but not citizenship. The act explicitly excludes official linguistic requirements for public officials as possible grounds for discrimination. The Advisory Committee notes that the act provides for the creation of a Gender Equality and Equal Treatment Commissioner and that the authorities have decided to widen the competence of the previously existing Gender Equality Commissioner, a specialised body introduced by the Law on Gender Equality in 2004, to advise and provide assistance to persons pursuing complaints of discrimination based on other grounds.

The Advisory Committee notes with concern that the Office of the Gender Equality Commissioner has not received any increase in human or financial resources after the broadening of its tasks and is, with two staff members, dramatically under-resourced. While there is little case-law related to discrimination in general, and awareness of the responsibility and competence of the Gender Equality Commissioner may overall have been limited in society, the broadening of her tasks to encompass discrimination based on ethnicity appears to be virtually unknown. The Commissioner received only eleven complaints related to ethnicity (out of 160) in 2009, of which two resulted in opinions being drafted, despite the fact that information brought to the attention of the Advisory Committee refers to numerous allegations of discrimination based on ethnicity, particularly as regards access to employment (see comments on Article 15 below). Moreover, minority representatives deplore the fact that the Commissioner is limited to responding to complaints or drafting general reports but cannot be pro-active, for instance by instigating proceedings on her own or monitoring regularly the implementation of the act.

The Advisory Committee further notes that, in line with amendments to the Chancellor of Justice Act in 2003, it is the Office of the Chancellor of Justice that has held the responsibility of promoting the principle of equal treatment in Estonia since 2004. In this capacity, he can act as Ombudsman and initiate proceedings against any legal entity governed by public law, or, as regards private legal entities, he may act as mediator between the victim and the alleged perpetrator of discrimination. However, despite the fact that during a survey in 2007 42% of respondents said that they had experienced unequal treatment during the past three years, the services of the Chancellor of Justice have been invoked only sparingly. This suggests a worrying lack of awareness about the available legal remedies against discrimination among the public at large, including those vulnerable to potential discrimination such as persons belonging to national minorities.

In view of the above, the Advisory Committee is pleased to note that the Ministry of Culture, the Ministry of Social Affairs and the Gender Equality and Equal Treatment Commissioner are planning to engage in information campaigns regarding the Equal Treatment Act as well as other possibilities to seek protection from discrimination. It wishes to underline in this context that the campaigns must be accompanied by comprehensive initiatives to train judges, prosecutors and other law enforcement personnel to ensure that they are suitably equipped to deal with complaints of discrimination. In addition, it is important to ensure that information on the Equal Treatment Act and the new functions of the Gender Equality and Equal Treatment Commissioner are publicised in awareness-raising campaigns aimed at society in general and targeting, in particular, those groups which are most exposed to discrimination.

Recommendations

The Advisory Committee urges the authorities to provide adequate human and financial resources to the Office of the Gender Equality and Equal Treatment Commissioner to enable it to function

independently and to provide effectively advise and support to victims of discrimination throughout the country. It also encourages them to consider broadening the powers of the Commissioner so that she can act more effectively against discrimination, including by taking a more pro-active role.

The Advisory Committee calls on the authorities to monitor regularly compliance with and implementation of the Equal Treatment Act and gather reliable data on complaints brought under the Equal Treatment Act so as to measure the impact that this act has on the fight against discrimination based on ethnic origin in Estonia.

Systematic information and training campaigns on the mandate and activities of the Gender Equality and Equal Treatment Commissioner as well as the Chancellor of Justice must be conducted among society as well as relevant public services, in particular law enforcement, to increase awareness of the legal remedies available for protection against discrimination. These must include outreach activities in areas populated in particular by potential victims of discrimination.

Naturalisation process

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee called for additional measures to make naturalisation more accessible, including by introducing free-of-charge Estonian language training opportunities and by exempting some groups of applicants, such as the elderly, from the language requirements under the Citizenship Act.

Present situation

The Advisory Committee welcomes continued efforts by the Estonian authorities to reduce the number of persons without citizenship residing in Estonia on a permanent basis. Despite these efforts, however, the number still remains at over 100,000 and the Advisory Committee notes with concern that the rate of naturalisations per year has been declining since 2005, with only 1,670 persons acquiring Estonian citizenship through naturalisation in 2009. While acknowledging the statement of the authorities that stateless persons have mostly the same rights as citizens, except the right to stand in any election or vote in parliamentary elections, the Advisory Committee wishes to point out that these latter rights are essential elements of being a member of the political community and participating actively in relevant decision-making. In addition, citizenship constitutes a strong symbolic component of integration that provides a sense of belonging and being appreciated as a member of society.

The Advisory Committee acknowledges the fact that the acquisition of Estonian citizenship may have become less attractive in the last years since stateless persons with the so-called 'grey passports' may travel visa-free to the European Union as well as to the Russian Federation and, in addition, do not have to serve in the military. Yet, it notes that minority representatives cite the non-affordability of language training opportunities coupled with lack of confidence in their existing State language proficiency as the main reason for not applying for citizenship. In accordance with §8 of the Estonian Citizenship Act, the fees for Estonian language classes are reimbursed once the applicant has successfully passed the Estonian language examination and the examination on the knowledge of the Constitution of the Republic of Estonia. However, for many potential applicants, the fees for a suitable language class are too high to pay, even when

considering the possibility of being reimbursed afterwards. The availability of some free-of-charge language courses in Ida-Virumaa (Viru County) as referred to in the State Report was unknown to minority representatives who spoke to the Advisory Committee, but the idea met with great enthusiasm. In this context, the Advisory Committee strongly commends the recent initiative of providing free-of-charge language classes in prisons and offering detainees the opportunity to pass the citizenship exam as part of the vocational programme in prisons.

The Estonian authorities have made particular efforts to facilitate the naturalisation of minors under the age of 15 and the Advisory Committee notes that the majority of naturalisations in the last years were, indeed, those of minors. This has been achieved by exempting minors under 15 from the citizenship examination requirements, if they pass equivalent language tests in school, as well as by informing parents who are permanent residents of Estonia of the possibility to register without any precondition their new-born child within the first year since birth as a citizen.

Despite the above efforts, the Advisory Committee notes with some concern that there is still a considerable number of stateless children in Estonia and regrets that the proposal by the Chancellor of Justice to grant citizenship automatically to all children born to stateless parents in Estonia, unless the parents object, did not receive any support. According to information obtained from various interlocutors, many parents still miss the opportunity to apply for citizenship for their child within the first year and consider the information campaigns that are carried out in this regard as unhelpful. The Advisory Committee was informed that parents who do not register their child are visited by the police to inform them of their rights. It doubts the appropriateness of this method, particularly given the reportedly limited trust that the police enjoys among minority communities in general.

Recommendations

The Advisory Committee calls on the authorities to increase their efforts to reduce the number of stateless long-term residents in Estonia. In particular, the Advisory Committee strongly encourages the authorities to consider seriously the introduction of free-of-charge language classes that will be helpful not only for passing the citizenship examination but also in general to promote the integration of persons belonging to national minorities into society.

Moreover, the Advisory Committee encourages the authorities to consider granting citizenship to new-born children of stateless persons automatically, unless the parents object. Such an approach would not only have a strong symbolic significance but would also spare a considerable number of long-term resident families from having to go through a formal citizenship application process, which is considered by some to be a psychological barrier.

Social marginalisation and its effects

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to design and implement special programmes to tackle social marginalisation and its effects that are felt particularly amongst national minorities. The authorities were asked to pay particular attention to the alarmingly high rate of HIV/AIDS amongst persons belonging to national minorities as well as the disproportionately high number amongst them in prisons.

Present situation

The Advisory Committee welcomes the concerted efforts made by the Estonian authorities in the prevention and treatment of HIV/AIDS that have benefitted large numbers of persons belonging to national minorities, and have led to the containment of the epidemic in the country.

The Advisory Committee, however, remains concerned by the persistent social marginalisation of persons belonging to national minorities, particularly as regards access to employment (see comments on Article 15 below). In this regard, it is essential that further efforts are made to gather reliable and disaggregated data on the situation and number of persons belonging to national minorities and their access to employment, housing, and social services. This data is needed to ensure that appropriate special measures can be designed and implemented to promote more effectively their full equality, including with regards to the multiple disadvantages experienced by women belonging to national minorities (see comments on data collection in Article 3 above). The Advisory Committee welcomes in this context initiatives by the Ministry of Social Affairs to provide a platform for more joint activities of majority and minority members, particularly in the employment field.

In addition, the Advisory Committee notes with concern that the number of persons belonging to national minorities in prisons is reportedly still disproportionately high. Fewer prisoners belonging to national minorities than ethnic Estonians are granted probation according to information at the disposal of the Advisory Committee.

Recommendation

The Advisory Committee calls on the authorities to increase their efforts to reduce the social marginalisation experienced by persons belonging to national minorities in a wide range of areas, including the justice system. Targeted measures are needed in terms of increased opportunities for vocational education for persons belonging to national minorities, as well as relevant training for private and public employers to promote full equality in access to employment. Particular attention should also be paid to the multiple discrimination experienced by women belonging to national minorities.

12. Finland

Opinion adopted on 14 October 2010

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee acknowledged the existence of comprehensive anti-discrimination legislation, but encouraged the authorities to pay more attention to its implementation and the development of suitable monitoring mechanisms, including as regards quality and implementation of equality plans. The Advisory Committee expressed particular concern at the discrimination faced by pupils from a minority background in schools.

Present situation

The Advisory Committee welcomes the various initiatives of the Finnish Government to complement its anti-discrimination and equality legislation and notes in particular the revisions

made in 2008. More specifically, these reforms broaden the competencies of the Ombudsman for Minorities to conduct and commission independent studies on issues related to ethnic discrimination and extend the scope of the prohibition of ethnic discrimination to cover relations between private individuals in the provision of public housing or access to public services.

The Advisory Committee is further pleased to note the creation of the 'Equality Committee' by the Ministry of Justice in January 2007 which was set up to conduct a broader reform of Finnish equality legislation with the purpose of making it more consistently applicable to all fields of life, including cases of multiple discrimination. As part of this initiative to strengthen the protection of equality and non-discrimination in Finland, the consolidation of all general provisions on equality and non-discrimination in one Act, as well as the establishment of one combined Equality Ombudsman authority that would cover all issues related to discrimination and equality except gender, are currently being discussed.

The Advisory Committee welcomes the on-going efforts to institute a more comprehensive approach to the diverse manifestations and dimensions of discrimination and agrees that the current Finnish legislative and administrative framework provides numerous structures of authority and competency which may create confusion among potential victims of discrimination. Nevertheless, it shares the concerns of some representatives of national minorities, such as the Sami, that the consolidation of all discrimination matters under one authority could result in a decrease of expertise on the particular issues of concern to national minorities that are, reportedly, now handled very successfully by the Ombudsman for Minorities.

The Advisory Committee is aware of efforts at the central State level to support municipalities to fulfil the requirement contained in the Anti-Discrimination Act to draw up individual "equality plans" for encouraging equal opportunities at municipal level but understands that a large number of municipalities have yet to fulfil this requirement and that many of the existing plans remain of poor quality. In this context, it strongly welcomes the 'Discrimination Monitoring Action Plan' under the Ministry of the Interior aiming at implementing a national discrimination monitoring system which, among others, facilitates the collection of relevant data and statistics and whose research may be used for training purposes and other efforts to improve further the municipal strategies to fight discrimination.

In addition, the Advisory Committee notes that, while cases of discrimination continue to be reported, actual complaints alleging discrimination are only rarely brought to court. In this regard, the Advisory Committee welcomes the ongoing initiative of the Ombudsman for Minorities to regionalise advisory services against discrimination in order to ensure that potential victims of discrimination throughout the country are made aware of the legal remedies available to them and are given better access to advice where necessary.

Recommendations

The Advisory Committee encourages the Finnish authorities to consult closely the representatives of national minorities when continuing their efforts for further consolidation of anti-discrimination legislation, including the examination of cases of multiple discrimination. While aware of the advantages of a comprehensive approach, the Advisory Committee urges the authorities to ensure that these efforts do not jeopardize the utilisation of the experience and expertise of existing structures dealing with issues related to national minorities such as the Ombudsman for Minorities

which has developed relationships of considerable confidence with the minority groups concerned.

The Advisory Committee encourages the authorities to pay due attention to the implementation of the relevant current legislation at central, regional and local level, including through the establishment and regular review of effective monitoring and evaluation mechanisms, through an increase in relevant awareness raising activities among potential victims, as well as through the allocation of adequate financial resources.

Full and effective equality of Roma

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee recognised State efforts to promote equality between the majority population and the Roma, but recommended that measures to ensure full and effective equality for Roma in such key fields as housing and the labour market be expanded to be felt also at the local level and in the private sector. The Advisory Committee further recommended that ways be sought to obtain improved statistical data.

Present situation

The Advisory Committee notes the proposal of the working group set up under the Ministry of Social Affairs and Health in December 2008 for a first *National Policy on Roma* and welcomes the fact that representatives of Roma communities in Finland were actively involved in the preparatory and drafting stages of this proposal. The Advisory Committee further notes the commendable focus of the proposal on educational activities for Roma young people as well as adults, aimed at fostering greater integration of the community into the labour market. While providing a number of concrete recommendations to the Finnish authorities as to how to enhance the equal treatment and social inclusion of Roma, the policy also seeks ways to increase the skills and resources of Roma organisations to enable them to effectively participate in all spheres of public life.

While strongly welcoming the above initiative and noting that the adoption of the proposal is in principle expected before the next Parliamentary Elections in April 2011, the Advisory Committee understands that no allocation of funding has yet been made for the implementation of the proposal and that, according to Roma representatives themselves, current shortcomings in terms of full and effective equality for Roma stem more from the non-implementation of existing provisions, due to insufficient resources, than from a shortage of legislative safeguards or policy initiatives.

The situation of Roma regarding access to housing as well as employment has improved somewhat and the Advisory Committee is pleased to note the important role played by the Ombudsman for Minorities in investigating cases of alleged discrimination and bringing them to the attention of the National Discrimination Tribunal. However, cases of alleged discrimination, particularly regarding access to housing, continue to be reported and the majority of Roma still face considerable obstacles in finding formal employment. The Advisory Committee supports the view of Roma representatives that concrete measures for the promotion of full and effective equality of Roma must be included in all relevant municipal equality plans in order to ensure that administrative structures are strengthened particularly at the local level where matters related to housing, for instance, are decided.

Recommendations

The Advisory Committee calls on the Finnish authorities to monitor regularly the relevant government entities with the current equality legislation with regard to Roma and to continue promoting the equality of Roma through the adoption of the *National Policy on Roma* and the allocation of adequate resources for the implementation of this policy.

The Advisory Committee reiterates its previous recommendation that efforts to ensure full and effective equality for Roma be focussed particularly at the local level and that the municipal equality plans be meaningfully used as a tool in this regard.

Data collection

Present situation

The Advisory Committee acknowledges the fact that the Finnish data protection legislation prohibits the registration of data related to a person's ethnic background. It notes, however, that the lack of reliable data makes it difficult for the Finnish authorities to ensure full and effective equality of persons belonging to national minorities through drafting targeted policies. A number of studies and surveys to investigate the economic and social status of, for instance, the Roma population have been commissioned and a survey is also being currently developed regarding linguistic skills among the Sami speakers (see comments below on Article 5). Nevertheless, the Advisory Committee still considers that the Finnish authorities should identify appropriate means of regularly obtaining reliable data related to the minority population, disaggregated by gender and age. This process must be carried out with strict respect for the principles contained in the Committee of Ministers' Recommendation No. (97) 18 and the Council of Europe Convention ETS 108 concerning the protection of personal data collected and processed for statistical purposes as well as the recommendations of the United Nations Economic Commission for Europe prepared in co-operation with the Statistical Office of the European Communities.

Recommendation

The Advisory Committee encourages the authorities to seek adequate means of obtaining more reliable data on the composition and situation of national minorities, in co-operation with the minorities concerned, and in full respect of the relevant international standards, in order to promote the effectiveness of the preparation and monitoring of measures designed to ensure full and effective equality of persons belonging to national minorities.

13. Germany

Opinion adopted on 27 May 2010

Article 4 of the Framework Convention

Combating discrimination

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee called on the German authorities to take the necessary steps to ensure the swift adoption of comprehensive anti-discrimination legislation, in conjunction with the launch of a public debate on the subject of discrimination.

The Advisory Committee also called on the German authorities to address as a matter of priority the disadvantages, resulting from discrimination, encountered by persons belonging to the Roma and Sinti communities and to step up efforts to narrow the gap between persons belonging to these communities and the rest of the population.

Present situation

The Advisory Committee welcomes the adoption, on 18 August 2006, of the General Equal Treatment Act which transposes into German law the EU's Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This is a major step forward in the fight against discrimination. The Advisory Committee also notes the creation of a new body to monitor compliance with the Act. This is the Federal Anti-Discrimination Agency, which has the duty of disseminating within society information on discrimination and the new law, providing advice and guidance to potential victims of discrimination and making recommendations on ways of countering discrimination.

The Advisory Committee notes that both the implementation of the General Equal Treatment Act and the work of the Federal Anti-Discrimination Agency with regard to housing have prompted some criticism. While recognising the legitimacy of creating and maintaining "socially stable resident structures", the Advisory Committee notes with concern that such practice remains controversial, may lead to discrimination based on ethnic origin, and thus may inhibit access of persons belonging to national minorities to social and private sector housing.

Representatives of the Roma and Sinti whom the Committee met deplore the fact that the Act covers only private-law relationships and that, consequently, acts of public bodies, including the police, are not covered by these provisions. As a result, legal redress against potentially discriminatory action on the part of government authorities is based on Article 3 of Germany's Fundamental Law (GG) which lays down the principle of equality before the law. The Advisory Committee believes that the anti-discrimination legislation could be expanded to make it applicable between individuals and public authorities.

Information received by the Advisory Committee refers to instances of discrimination against persons belonging to national minorities, chiefly the Roma and Sinti. Discrimination is alleged in the field of education (see remarks in respect of Article 12), and in access to housing or employment (see also remarks in respect of Article 15). Cases of access being denied to public places (restaurants, swimming pools, camp sites) have also been reported to the Advisory Committee. A number of persons with whom the Advisory Committee spoke also continue to claim that the Roma and Sinti are still subjected to practices of ethnic profiling. By and large, however, there is very little case-law on instances of discrimination based on ethnic background. Since the General Equal Treatment Act was passed, there have been no reported cases involving persons belonging to one of the four groups protected under the Framework Convention. In this context, the Advisory Committee regrets the lack of any exact statistics on cases brought under the General Equal Treatment Act. This makes it difficult to measure the impact which this law might have on the fight against discrimination based on ethnic origin or belonging to a national minority.

The Advisory Committee notes that the remit of the Federal Anti-Discrimination Agency is restricted to the provision of advice to potential victims, but that the Agency cannot instigate proceedings itself or gather information on individual cases. This limits its capacity for action. In

addition, the Agency does not have regional or local offices. The Advisory Committee also notes with concern that persons most vulnerable to discrimination seem unfamiliar with the Agency's remit and activity. The same applies to the spirit and provisions of the General Equal Treatment Act which, in the view of several of the Advisory Committee's interlocutors, need to be publicised in awareness-raising campaigns aimed at society in general and targeting in particular those groups that are most exposed to discrimination.

Information received by the Advisory Committee further indicates that persons belonging to the Roma and Sinti communities who believe that they have suffered discrimination only rarely refer the matter to the Federal Anti-Discrimination Agency and, due to a lack of faith in the legal remedies available to them, do not launch proceedings against alleged discriminatory acts. Against this background the Advisory Committee welcomes the 2005 Framework Agreement between the Government of Rhineland-Palatinate and the *Land* Association of the Central Council of German Sinti and Roma to combat all forms of discrimination against the Roma and Sinti, including through the express prohibition of any information on the ethnic background of criminal suspects being shared by the police with the media. The Advisory Committee expects this agreement to have a positive impact on the fight against discrimination in this *Land*.

The Advisory Committee welcomes the fact that the General Equal Treatment Act opens the way for positive measures to prevent discrimination and minimise its undesirable effects. This should significantly reinforce the effectiveness of the fight against discrimination and contribute to the promotion of full and effective equality, as required by Article 4 of the Framework Convention.

Against this background, the Advisory Committee notes with concern the position expressed by the German authorities in the State Report that it is not appropriate to implement positive measures and develop an overall strategy to promote full and effective equality for the Roma and Sinti communities. The reasons given are that these individuals would risk increased stigmatisation and that it would be hard to devise measures of this kind in the absence of any hard facts and figures on the group. The Advisory Committee wishes to remind the German authorities, firstly, that under Article 4.3 of the Framework Convention, measures adopted with a view to promoting full and effective equality for persons belonging to a national minority are not to be considered as acts of discrimination. Furthermore, it points to the importance of having reliable data on the situation of national minorities, so that potential discrimination against them can be combated effectively (see remarks in paragraphs 53 - 57). The Advisory Committee also notes with interest that the German authorities, especially at *Land* level, are already putting a number of positive measures in place, in the fields of education or housing, often with the assistance of mediators from the Roma and Sinti communities concerned. It trusts that action of this kind will be continued and intensified in the future, as part of anti-discrimination policies.

Recommendations

The Advisory Committee calls on the German authorities to undertake regular monitoring of compliance with the General Equal Treatment Act. It also encourages them to do more to raise awareness of the Act and the fight against discrimination amongst the population as a whole. It is especially important that persons most vulnerable to discrimination are fully informed of the legal remedies available to them.

The Advisory Committee echoes the European Commission against Racism and Intolerance in calling on the authorities to consider broadening the powers of the Federal Anti-Discrimination

Agency so that it can act more effectively against discrimination. It is also important to ensure that the Agency has sufficient resources so that it can perform its remit entirely independently and so offer effective support to victims of discrimination.

The Advisory Committee calls on the authorities to pursue and develop measures to combat discrimination against the Roma and Sinti communities and promote full and effective equality for them in all areas, including through positive measures and as part of an overall strategy (see also remarks in respect of Articles 12 and 15).

The Advisory Committee calls on the authorities, when adopting housing policies, to avoid unjustified exclusion, isolation or discriminatory treatment of persons belonging to national minorities in the public and private housing sectors.

Gathering of data on ethnic origin

Recommendations of the two previous monitoring cycles

During the previous monitoring cycles, the Advisory Committee found a persistent lack of reliable statistical data which would be useful in the fight against discrimination based on ethnic grounds and the development of effective measures to promote equal opportunities. It encouraged the authorities to consider gathering data to remedy this deficiency, using methods offering adequate personal data protection.

Present situation

The Advisory Committee appreciates that the German authorities, and many persons belonging to national minorities, are reluctant to gather or disclose sensitive personal data, especially on ethnic origin, given the disastrous use made of such data by the National Socialist regime. While being fully aware of the sensitivities involved, the Advisory Committee notes that the lack of reliable data makes it difficult for the German authorities to ensure full and effective equality for persons belonging to national minorities. The absence of unemployment data, for example, for each national minority leads the authorities to the assumption that, in principle, membership of a national minority has no impact on a person's economic, social or cultural status. Evidence presented to the Advisory Committee, however, indicates that members of the Roma and Sinti communities, in particular, still find it significantly more difficult than the rest of the population to find formal employment.

The Advisory Committee considers therefore that the German authorities should identify the most appropriate means of obtaining reliable data related to the minority population, while strictly respecting the principles contained in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes as well as the recommendations of the United Nations Economic Commission for Europe prepared in cooperation with the Statistical Office of the European Communities. It has learned with regret that the 2011 population census will not include a question about ethnic background or language. However, the Advisory Committee notes with interest that it will, for the first time, include questions about the citizenship and the country of origin of migrants.

The Advisory Committee notes, however, that some data on persons belonging to national minorities exists. Sources include, for example, the annual report submitted to the Saxony *Landtag* on the situation of persons belonging to the Sorbian minority, data from educational

establishments providing teaching in minority languages, and surveys and studies conducted by non-governmental organisations. The authorities could make use of such data with due regard for existing standards on personal data protection, to enable them to respond better to the needs expressed by national minorities and remedy any discrimination.

The Advisory Committee is pleased to note that some *Länder* and cities (including Berlin, Wiesbaden, Essen and Stuttgart) are in the process of setting up a database which will provide up-to-date data on the integration of persons of foreign origin and any discrimination they encounter. The Committee believes it is important to keep a close eye on how this project proceeds and, if appropriate, to learn lessons from it as to how the situation of national minorities might be similarly assessed.

Recommendation

The Advisory Committee takes note of the authorities' decision to continue using information on the number and situation of persons belonging to national minorities provided by the minorities themselves, in full compliance with international standards on personal data protection. In order to promote the effectiveness of the preparation and monitoring of measures designed to ensure full and effective equality, it encourages the authorities to seek means of obtaining more data on the composition and situation of national minorities, in co-operation with the minorities concerned, and in full respect of the relevant international principles.

Gathering of data by the police

Recommendations of the two previous monitoring cycles

During the previous monitoring cycles, the Advisory Committee called on the authorities to review police methods of gathering data on the ethnic background of criminal suspects and ensure that the use of such procedures not lead to discrimination against persons belonging to certain minority groups.

Present situation

The Advisory Committee welcomes the adoption by the Conference of Interior Ministers of the *Länder*, in October 2007, of recommendations on the use of discriminatory language by police authorities. These state a number of principles designed to stop police forces from using discriminatory language to describe persons belonging to national minorities. These recommendations are in response to the repeated calls made by representatives of the Roma and Sinti for a number of years for stronger action against this kind of practice within the police.

The Advisory Committee also welcomes the fact that some *Länder* have now adopted police rules of conduct, in the form of decrees or internal regulations, aimed at ending the use of discriminatory or stigmatising language.

The Advisory Committee notes, however, that the recommendations drawn up by the Conference of Interior Ministers and most of the rules adopted by the *Länder* all allow mention to be made of a criminal suspect's ethnic background if this is deemed necessary for a correct understanding of the case in question. The Advisory Committee believes that it is essential to monitor closely implementation of the various provisions on possible references to a suspect's ethnic background, to ensure that these do not result in the reintroduction of inappropriate practices (see also remarks in respect of Article 6).

The Advisory Committee also notes with interest that the *Land* of Rhineland-Palatinate dissociated itself from the special recommendation that allows a suspect's ethnic background to be mentioned if this is deemed necessary, claiming that it was not necessary. Moreover, police instructions in this *Land*, laid down in conjunction with the 2005 Framework Agreement for the protection of Roma and Sinti between Rhineland-Palatinate and the respective *Land* Association of the Central Council of German Sinti and Roma, forbid any reference to a suspect's ethnic background. These instructions also deal with the way in which information on the ethnic background of persons suspected of an offence is passed to the press and other media. The Advisory Committee considers it would be useful to assess the practical effects of these provisions of the Framework Agreement on the work of the police and media and to conduct a comparative study of practices in other *Länder*.

Recommendation

The Advisory Committee calls on the authorities to continue their efforts to end the use by police authorities of discriminatory terminology and any transmission of this to the media. It is particularly important that compliance with the rules adopted be routinely monitored, at both federal and *Land* level.

14. Hungary

Opinion adopted on 18 March 2010

Article 4 of the Framework Convention

Institutional and legal developments in the area of discrimination

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee pointed out shortcomings with regard to the inclusion of the prohibition of discrimination in the legislative framework. It stressed the need to develop measures to address discrimination in the areas of education, employment and housing, to step up co-operation and coordination between the different actors and to set up swiftly the independent authority provided for in the Law on Equal Treatment and the Promotion of Equal Opportunities.

Present situation

The Advisory Committee notes with satisfaction that substantial measures have been taken with a view to improving the legislative framework to prevent and combat discrimination and that the persons belonging to national minorities with whom it met during the visit, with the exception of the Roma minority, emphasised that they encountered no discrimination in their daily lives.

The Advisory Committee notes that the Equal Treatment Authority responsible for ensuring equal treatment, set up in 2005, is competent for receiving complaints and investigating matters on its own initiative. Its decisions are binding, it may impose fines and publicly name perpetrators of discrimination. The Authority also gives opinions on draft legislation, makes proposals to the Government and checks whether companies fulfil their legal obligations in the area of equal opportunities.

The Advisory Committee also notes with interest the latest developments since the setting up of the Authority, including the shifting of the burden of proof. In addition NGOs have the possibility

to launch proceedings when they see a risk of discrimination, even when there is no identified victim.

The Advisory Committee also observes that a co-operation agreement has been signed by the Authority with the Equal Opportunities Offices existing in all 19 Hungarian counties aimed at facilitating access to remedies for victims outside the capital. Extensive publicity work has been carried out in the various media in order to raise awareness and inform a very wide audience of the remedies which exist in the event of discrimination.

The Advisory Committee notes that the number of complaints has increased considerably since 2005. According to the authorities, this reflects the effectiveness of this institution. The representatives of minorities have indeed emphasised the high quality of the work carried out by the Equal Treatment Authority. In most cases, the courts petitioned by plaintiffs seeking redress have confirmed the Authority's opinion. The Advisory Committee notes however that the increased number of complaints reflects that cases of discrimination occur in Hungary.

The Advisory Committee welcomes the support provided by the Government to the Anti-Discrimination Customer Service Network set up by the Ministry of Justice and Law Enforcement to help the Roma to bring proceedings in the event of discrimination. This Network was reinforced in 2009 through the hiring of 30 additional law specialists who operate in 47 municipalities.

Recommendation

The Advisory Committee encourages the authorities to continue to take measures to combat discrimination. It calls on the authorities to maintain their support for the Equal Treatment Authority's activities by continuing to provide it with the necessary human and financial resources.

Situation of Roma

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee stressed that serious problems subsisted with regard to Roma, particularly concerning acts of discrimination against them, and it referred to the difficulties faced in different sectors, such as education, employment, housing and health. It encouraged the authorities to step up their efforts to enable all Roma to enjoy decent living conditions.

Present situation

The Advisory Committee notes that for some years now the authorities have made increased efforts to combat discrimination and integrate Roma into society. The legislative framework has been consolidated and, in 2007, Parliament passed a Resolution on the Strategic Plan to implement the Decade of Roma Integration programme for 2007-2015, laying down a set of tasks geared to equal treatment in the area of education, employment, housing and access to health care. The Plan also involves the media and civil society in promoting the integration of Roma. In addition, in May 2008, an Inter-ministerial Commissioner on Roma Affairs was instituted to coordinate the State tasks pertaining to Roma issues.

Nevertheless, the Advisory Committee notes with regret that the situation of Roma only seems to improve very slowly and they still face discrimination and difficulties in different sectors, in

particular in employment, education and housing (see comments on Article 15, paragraph 128 to 133).

A number of sources concur that it is extremely difficult for the Roma to obtain employment. NGO representatives met during the visit mentioned, for instance, frequent instances of people of Roma origin arriving for a job interview previously arranged by telephone only to be systematically told that the job vacancy had already been filled. It is with concern that the Advisory Committee hears from different sources, like the European Committee of Social Rights, that despite the measures taken to encourage the employment of the most vulnerable groups, persons belonging to the Roma are more often discriminated against in the labour market than others.

The Advisory Committee further notes that the authorities reformed the health system in 2006 and instructed a supervisory authority to receive complaints and to fine health care providers and publicly name them if the rights of patients are infringed. The Advisory Committee notes, according to the data available to it, that there are very few complaints of direct discrimination on grounds of ethnic origin. Nevertheless, it is concerned by the fact that Roma still suffer from discrimination, despite the different programmes set up by the authorities to raise awareness among medical staff of the specific problems of the Roma.

Recommendation

The Advisory Committee urges the authorities to exert more efforts to prevent, to combat and to sanction the inequality and discrimination suffered by the Roma. The authorities should step up their efforts to improve the living conditions of Roma and to promote their integration into society.

Ethnic data collection

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee stressed the need for reliable data in order to implement the Framework Convention by the collection of statistical data in various fields or by other means, such as findings based on *ad hoc* studies and special surveys or opinion polls.

Present situation

The Advisory Committee notes with interest that the Hungarian National Statistical Office, relying on the results of the 2001 population census, regularly issues analyses disaggregated by areas such as age, sex, education, employment, occupational qualifications, civil status, etc. on the situation of persons belonging to national minorities. The demographic situation of minorities has also been the subject of studies conducted by the National Minorities Research Institute and the Hungarian Academy of Science.

The Advisory Committee takes note of the preparation of a National Segregation Database which, according to the authorities is to be an important element in the 2010-2011 Action Plan to implement the Strategic Plan of the Decade of Roma Inclusion Programme, having won support from the European Commission's Progress Programme. The major goal of the project is to prepare, based on data on population, schooling, employment, etc. available in the National Statistical Office, maps showing segregated settlements and discriminatory sectors for the entire country.

More generally, the Advisory Committee recalls the importance to collect further information on the situation of national minorities, while fully respecting international standards in the field of personal data protection.

Recommendation

The Advisory Committee encourages the authorities to continue with their efforts to ascertain the impact of policies on the socio-economic position of national minorities in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification and in accordance with international standards of personal data protection.

15. Ireland

Opinion adopted on 10 October 2012

Article 4 of the Framework Convention

Equality legislation and mechanisms

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to 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 were also asked to 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.

Present situation

Ireland continues with its commitment to be in the forefront in efforts to ensure strong equality legislation. Since the adoption in 2006 of the second Advisory Committee Opinion, the following acts have modified the civil law legislation relating to discrimination: the Protection of Employment Act 2007 and Unfair Dismissal Act 2007 in the employment protection field, the Civil Law (Miscellaneous Provisions) Act 2008, seeking to implement the EU Gender Goods and Services Directive, and the Civil Partnership Act 2010. The Advisory Committee notes however that, according to civil society representatives, the scope of the Equality Act has not been expanded and does not cover governmental actions such as national policy strategies, departmental policies and decisions on the allocation of funding in relation to areas such as health, education and housing.

The Advisory Committee notes the continuing active involvement of the Equality Authority, an independent body set up under the Employment Equality Act 1998. It welcomes the implementation and dissemination of information on equality legislation in particular to any person who feels that he or she has been discriminated against on any of the grounds covered in the equality legislation, including that of membership in the Traveller Community.

The Advisory Committee notes that during the year 2011 the Equality Authority dealt with 132 case-files under the Employment Equality Acts 1998-2011. Of these, 64 were new files opened in 2011 with the grounds of disability, gender, age and race, accounting for the majority of new case-files. Discrimination on the grounds of membership in the Traveller Community was alleged in 2 cases. Also, in 2011, 120 case-files were processed under the Equal Status Acts 2000-2011. Of

these, 67 were new files opened in 2011, with the grounds of disability (47), age (27), membership in the Traveller Community (14) and race (9) accounting for the majority of new case-files.

The Advisory Committee regrets, that as part of the government's response to the economic crisis, there have been severe cuts to the budget of the Equality Authority. In 2008, the first year of the economic crisis, the budget was reduced by 43% to €3,333,000, which led to the resignation of the CEO of the Authority and a campaign by an alliance of NGOs against the cuts. The budget was further reduced in 2010 to €3,200,000 and in 2011 to €3,057,000.

The Advisory Committee notes the important role played by the Irish Human Rights Commission (established under Human Rights Commission Acts 2000 and 2001) in promoting and protecting human rights, including by advising on the compatibility of legislation with the rights protected by the Constitution of Ireland and by international treaties to which Ireland is a party. One of the strategic priorities set out in the Strategic Plan (2007-2011) has been to address issues affecting communities and diverse ethnic and minority groups while identifying economic, structural or related factors that could give rise to the marginalisation of these or other groups.

The Advisory Committee notes that a Working Group was established in 2011 to elaborate a proposal on the establishment of a new and enhanced Irish Human Rights and Equality Commission (IHREC) which would merge the Irish Human Rights Commission and the Equality Authority. The objective is to set up a streamlined body able to champion human rights and equality effectively, efficiently and cohesively. This work is currently on-going.

According to the Ministry for Justice, Equality and Defence, the purpose of the new IHREC, would be to protect and promote human rights and equality, to encourage the development of a culture of respect for human rights, equality and intercultural understanding in Ireland, to work towards the elimination of human rights abuses and discrimination and other prohibited conduct, while respecting diversity and the freedom and dignity of the individual and, in that regard, to provide practical assistance to persons to help them vindicate their rights. The new commission should directly report to the Parliament and comply with the Paris Principles.

The Advisory Committee welcomes the fact that the Equality Tribunal continues to act as an independent state body set up to investigate or act as a mediator in respect of complaints of discrimination. It deals with all complaints of discrimination in employment and access to goods and services, disposal of property and certain aspects of education which come under the Equality Act. It decides on a substantial number of cases. In 2011, the last full year for which figures are available, it ruled on 268 employment equality cases, 67 equal status cases and seven pensions cases. Most decisions were handed down more than two years after the complaint was submitted, and some after a delay of over four years. The Advisory Committee considers that, whereas a two-year duration of a procedure before the Equality Tribunal seems to be reasonable, a delay of four years demonstrates instances of ineffectiveness in its work.

The Advisory Committee acknowledges that the existing employment rights legislation is currently under review, and there are plans to merge the Equality Tribunal with the Labour Relations Commission, Rights Commissioners, the National Employment Rights Agency (NERA) and the Employment Appeals Tribunal. The new structure would provide for a single two-tier body with one point of entry (first instance) and one locus for appeals (appellate body).

The Advisory Committee deplores that cases of discrimination on the ground of membership in the Traveller community with regard to access to licenced premises continue to be reported. It notes that out of 54 applications to the District Court under the provisions of Section 19 of the Intoxicating Liquor Act, 2003, fifty cases of alleged discrimination on the grounds of membership in the Traveller community, and in four cases compensation was paid to the applicants.

The Advisory Committee further notes that the situation of non-nationals, in particular refugees, asylum seekers and migrants continues to raise concerns. This issue has been discussed during the joint visit of the Advisory Committee and the ECRI to Ireland earlier this year and will be extensively covered in the forthcoming ECRI report (see § 8).

Recommendations

The Advisory Committee calls on the authorities to ensure that the new Irish Human Rights and Equality Commission fully complies with the Paris Principles and that the planned structures to replace the Equality Tribunal are established without delay. The authorities should ensure that both bodies are given more resources to function effectively and independently.

The Advisory Committee calls on the authorities to consider carefully the scale and impact of the financial and ensuing human resources' cuts to IHREC and the structures established to replace the Equality Tribunal, and urges them to ensure that they have all necessary resources to carry out their functions effectively and independently.

The Advisory Committee invites the authorities to continue to monitor the implementation of the Intoxicating Liquor Act, and ensure in particular that an accessible, affordable and effective remedy in cases of alleged discrimination is available.

The Advisory Committee encourages the authorities to continue to respect the human rights and address the needs of non-nationals, including through legislative measures.

Traveller and Roma women

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee considered that the gender dimension needed 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.

Present situation

The Advisory Committee notes with satisfaction the adoption of the *National Women's Strategy 2007-2016*, which recognised that discrimination continues to be a major issue for Traveller women and recommended concerted efforts to overcome it. It welcomes the establishment of a positive action programme, *Equality for Women Measure 2010-2013*, administered by Pobal, with the aim of fostering gender equality. It is particularly welcome that each of the strands of the programme contained specific, quantifiable initiatives designed to empower Traveller women. The

Advisory Committee further notes the earlier Pilot Development Initiative for Roma Women, supported by the authorities.

In the framework of the Equality for Women Measure Programme, local initiatives, such as the Galway Traveller Movement Empowering Traveller Women Entrepreneurs Project, provided business support in areas such as business planning, market research, pricing, book-keeping, challenging discrimination, advertising, marketing and customer care. Such initiatives should be encouraged and further supported in a sustained manner.

The Advisory Committee notes the adoption of the National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 by the National Office for the Prevention of Domestic, Sexual and Gender-based Violence. It further welcomes the establishment by Pavee Point Travellers' Centre of a Violence Against Women (VAW) Programme. The aim of this Programme is to develop a Traveller analysis of VAW, influence the development of culturally appropriate responses for Traveller women, influence government policy and promote awareness and provide training on the issues of sexism and VAW with Traveller women, Traveller groups, service providers and the wider community.

Recommendations

The Advisory Committee calls on the authorities to pursue developing, resourcing and implementing programmes, in co-operation with the representatives of the Traveller and Roma women, in particular with the view to establishing effective strategies for women's empowerment and equality.

In their broader efforts to address resolutely violence against women, the authorities should also continue to take culturally appropriate steps to tackle domestic, sexual and gender-based violence against Traveller and Roma women.

16. Italy

Opinion adopted on 15 October 2010

Articles 4 and 6 of the Framework Convention

Anti-discrimination legal and institutional framework

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee invited the authorities to provide all necessary support for the proper functioning of the newly established Office for the Promotion of Equal Treatment and the Fight against Racial Discrimination (UNAR).

It encouraged them to complete the anti-discrimination legislative framework in order to tackle discrimination in all areas of life and to develop anti-discrimination policies, in the light of findings from the UNAR and regional institutes for research into discrimination.

The authorities were also encouraged to consider improving procedural safeguards and legal remedies to make existing statutory provisions against discrimination more effective and ensure that they were more widely used in practice.

Present situation

The Advisory Committee welcomes the fact that Italy has continued to take steps to improve its legislative and institutional framework for preventing and combating discrimination. It notes that, following criticism from the European Commission in 2007, Italian legislation was amended by Law No 101 of 6 June 2008 and the burden of proof now lies with the defendant, if the plaintiff is able to provide sufficient factual evidence to justify a presumption of direct or indirect discrimination.

The Advisory Committee recalls that the setting up of UNAR within the Department for Equal Opportunities of the Presidency of the Council of Ministers raised a series of questions about this institution's independence. The Advisory Committee noted with interest the clarifications provided by the representatives of UNAR, during its visit to Italy, with regard to this institution's functional and financial independence. In their view, the fact that UNAR comes under a governmental body has not affected its independence in its work of promoting equal treatment or its impartiality in assessing compliance with the principle of non-discrimination. The involvement of judges in its work, the fact that its funding is guaranteed by law and the fact that its current Director is an independent figure with extensive human rights experience are cited in support of these statements.

The Advisory Committee notes that, although more regional anti-discrimination observatories have been set up, they are still relatively few in number and more tangible progress is expected in this regard. The Advisory Committee however notes that some commendable initiatives have been taken in this area in the last few years, such as agreements signed with several regions and municipalities and with NGOs and trade unions in order to form a constructive partnership in the fight against discrimination. It was also informed that UNAR takes active steps to monitor the media, and expressions of discrimination, hostility, racism and xenophobia observed in media broadcasts or the press are systematically reported to the Journalists' Association.

The Advisory Committee notes that, in its first reports to Parliament, UNAR proposed *inter alia* the introduction of arrangements enabling it to bring legal proceedings to ensure more effective support for victims of discrimination. It notes, more generally, that UNAR is still faced with a shortage of appropriate human and financial resources, a relatively limited scope for action and the need to increase the impact of its work, particularly in cases of alleged discrimination by the central and/or local authorities. However, it notes with satisfaction that, in several cases, UNAR has succeeded through its work in putting an end to discriminatory measures or decisions taken by certain local authorities or having them set aside by the courts.

According to UNAR statistics, in the five years since it has been set up, the majority of the complaints submitted to it report discrimination in employment and housing, in public services, in the media, in education and in law enforcement. In general, the number of cases of discrimination reported to it has increased and more and more complaints have been lodged against discriminatory measures taken by the local authorities. The Advisory Committee notes with regret that persons belonging to the Roma and Sinti and persons belonging to other vulnerable groups, such as migrants, refugees and asylum-seekers, largely predominate among the victims of discrimination.

The Advisory Committee also notes that the number of cases of ethnic or racial discrimination brought before the courts is still fairly small. The authorities attribute this to the lack of information about anti-discrimination legislation and the available remedies among both the population groups most exposed to discrimination and NGOs, notwithstanding the efforts made to disseminate this information more effectively. The Advisory Committee welcomes the support given by UNAR, including through training sessions, to organisations active in combating discrimination, particularly those empowered to litigate on behalf of victims of discrimination. The co-operation agreements signed by UNAR with lawyers' professional organisations, with a view to fostering more widespread use of the remedies available in this field, is also a positive development.

The Advisory Committee regrets that, despite its international commitments in the UN framework and under the Paris Principles and despite repeated calls from international institutions, Italy has still not set up an independent national body for the defence and protection of human rights. In this context, it wishes to voice its deep concern over recent reports of problems encountered by members of NGOs in carrying out their work on human rights protection, and in particular by human rights advocates involved in efforts to assist Roma in defending their rights.

Recommendations

The Advisory Committee urges the authorities to give their full support to UNAR and to ensure that all the necessary conditions, including adequate human and financial resources, are met to enable this institution to continue its work effectively and independently, including in the different regions of Italy. Adequate consideration should be given to increasing its scope for action, including legal action.

The authorities are also urged to set up without further delay a national institution for the protection of human rights and to make available all the resources needed for it to operate efficiently and independently, in accordance with the Paris Principles.

The Advisory Committee strongly encourages the authorities to continue and increase the provision of information to the public about existing legislative safeguards in the area of protection against discrimination and the available remedies. Steps should also be taken to increase awareness of these issues among the public authorities, including law enforcement agencies, the members of the judiciary and the media.

Tolerance and intercultural dialogue. Fight against racism and xenophobia

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to continue paying particular attention to the problems faced by migrants, asylum-seekers and refugees and to tackle the negative climate surrounding these persons.

The Advisory Committee invited the authorities to make an increased effort to encourage the media, with due respect for their independence and freedom of expression, to present a fairer image of minorities. The authorities were also called to ensure that they themselves stopped contributing to negative perceptions in this field.

In addition, the Advisory Committee emphasised that the media had a responsibility – including through self-regulatory bodies – to promote tolerance, combat xenophobia and intolerance and

avoid stereotyping and the negative portrayal of persons belonging to certain ethnic or religious groups.

The Advisory Committee encouraged the authorities to improve human rights training for police officers and ensure transparent and effective investigation in alleged cases of excessive use of force.

Present situation

The Advisory Committee notes with satisfaction that relations between persons belonging to the recognized linguistic minorities and the majority are characterised, in general, by tolerance, understanding and mutual respect. It welcomes the efforts made by the regions to promote integration and intercultural dialogue. It notes, for example, the peaceful co-existence in Trieste of different religious communities, with their places of worship (the Catholic Church, the Serbian Orthodox Church, the German-speaking Catholic Church and, more recently, the Romanian Church), opened in some cases with the support of the authorities. It notes with interest the setting up, in Trieste, of a migrants' committee to enable migrants to discuss their problems and needs and participate in public debate.

The Advisory Committee also notes efforts made at the regional level to support projects and programmes that highlight the diversity characterising the regions concerned. For example, the Friuli Venezia Giulia region, like many other regions and/or provinces, has supported the production of documentaries on the different languages spoken in the region and the communities in question. Further commendable projects, such as "Year 2008 - The Occitan, Franco-Provençal and French mother tongues as added value of the mountain in the Province of Torino", have been implemented in areas inhabited by persons belonging to linguistic minorities, in order to strengthen mutual understanding, respect and intercultural dialogue.

However, the image of some minorities conveyed by the media is sometimes marked by negative prejudices. Isolated cases of expression of hostility towards persons belonging to the Slovenian minority have reportedly been noted in the media in the province of Udine. It appears also that negative stereotypes persist about the Friulian-speaking community and its efforts to preserve and promote its language. Although these are very rare cases, it is important that the authorities take a firm position against such expressions of hostility.

The Advisory Committee was also informed that the majority population has little knowledge of, and a fairly limited interest in, minority culture and languages, particularly outside the areas where the groups concerned traditionally live.

The Advisory Committee acknowledges that a whole series of measures and programmes have been implemented in the last few years by Italy to increase tolerance, intercultural dialogue and respect for human rights and cultural diversity. These measures should have a positive impact on interethnic relations and mutual understanding throughout Italian society and thus contribute to effective implementation of the principles guaranteed in Article 6 of the Framework Convention. The Advisory Committee wishes to point out that the scope of Article 6 is broad and that the Parties to the Framework Convention undertake, by virtue of this provision, to promote mutual respect and understanding among all persons living on their territory, irrespective of their ethnic, cultural, linguistic or religious identity, or their nationality.

The Advisory Committee notes that, in the face of a massive influx of migrants and the persistent problems affecting them, an awareness-raising campaign was conducted in 2008-2009 and a national Plan for integration and security – “Identity and Encounter” was adopted by the Government in June 2010. In the field of education, it notes the incorporation of human rights education into school curricula and the drawing up of specific educational programmes with a strong intercultural component, as well as the inclusion of human rights and international humanitarian law in training for law enforcement personnel and judges.

The Advisory Committee notes that Italian legislation includes a series of provisions against racism and incitement to racial hatred. It welcomes the fact that, as stipulated by Law No 85/2006, racial discrimination is an aggravating circumstance which increases by half the sanctions applicable in case of crimes committed on the basis of the race, ethnic origin, nationality or religion. Under the same Law, the setting up of organisations or groups with the aim of inciting racial discrimination, and participation in such groups, are prohibited.

While welcoming these developments, the Advisory Committee notes with deep concern that Italian society is marked by a serious deterioration in intercultural dialogue and an increase in racist or xenophobic attitudes towards persons belonging to vulnerable groups such as Roma and Sinti, Muslims, migrants, especially undocumented workers, refugees and asylum-seekers.

Various sources concur that such hostile attitudes are also to be found on an institutional level. The Advisory Committee notes in this connection that the Government's policy and certain measures taken by the authorities in the last few years with regard to the Roma population and migrants have prompted severe criticism in terms of respect for human rights both at the national level and within international organisations and institutions.

Like these organisations, the Advisory Committee notes with deep concern that these policies and measures are underlined by an approach marked by rejection and hostility particularly towards the Roma and Sinti. It refers in particular to the legislative and administrative texts adopted since 2006 under the “security package”, the “nomad” emergency decrees issued from May 2008 onwards and the ensuing measures, including the census, that have been used in the ‘camps for nomads’. Cases of forced return of migrants, despite the recommendations of international organisations, are also problematic in terms of respect for human rights and compliance with existing standards and safeguards in this field. The Advisory Committee is particularly concerned that such cases also include opponents of the ruling regime in the country of origin and concern countries where such persons are exposed to serious risks of ill-treatment.

The Advisory Committee is also deeply concerned by the increase in the frequency and scale of racial hate speech and intolerance in public discourse in Italy over the last few years. Prejudice, intolerance and racist and xenophobic statements against Roma and Sinti, Muslims and migrants are increasingly common in the discourse of certain prominent political figures, and are systematically relayed by certain media outlets. It considers that this situation is not compatible with Article 6 of the Framework Convention and that a firm and effective response from the authorities is essential to combat such statements and the impact they have on Italian society.

In this context, the Advisory Committee regrets to note that Law No 85/2006, while strengthening some anti-discrimination provisions, has at the same time mitigated the sanctions applicable in case of propaganda advocating racial or ethnic superiority or hatred and instigation to commit, or the commission of, discriminatory or violent acts on racial, ethnic, national or religious grounds

(the initial maximum term of three years' imprisonment was reduced to either a fine of 6 000 Euros or 18 months' imprisonment). The Advisory Committee considers this legislative amendment problematic and is of the opinion that a more balanced interpretation of freedom of expression would have been beneficial, in the light of the climate of growing intolerance and the increase of hate speech in public discourse.

The Advisory Committee further notes that aggressive xenophobic discourse and incitement to racial hatred have led to a significant increase in manifestations of intolerance in Italian society and to the stigmatisation and marginalisation of specific population groups. The repeated acts of hostility and sometimes extreme violence against such persons, particularly Roma and migrants, remain a matter of serious concern. Furthermore, various sources mention frequent cases of abuse and violence, committed against these persons by law enforcement officers, despite the measures taken by the authorities to prevent and combat this phenomenon.

The Advisory Committee notes with regret that the negative stereotypes associated with certain groups such as Roma and Sinti, Muslims, migrant workers and asylum-seekers are still very common in newspapers and media broadcasts, which has clearly contributed to reinforce the stereotypes associated with these groups. In particular, news reports often link these groups to the perpetration of certain crimes. The Advisory Committee welcomes the drawing up of a media code of ethics. It also expresses the hope that the media supervisory authorities will devote the requisite attention in their work to combating discourse that is racist, discriminatory and/or prejudicial to persons belonging to vulnerable groups.

Expressions of racial hostility and hatred and xenophobia have also become increasingly common on the Internet. The Advisory Committee realises what a difficult task it may be for the authorities to take action to limit the growth of this phenomenon while respecting freedom of expression. It considers it essential, however, to take resolute measures to limit the dissemination of racism and racial hatred through the Internet. Such measures should be guided in particular by the principles set forth in the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. Lastly, information received by the Advisory Committee points to the persistence of racist attitudes at sports events despite the efforts made by the authorities to tackle this problem.

Recommendations

The authorities must take firm and effective measures to prevent and combat all forms of intolerance, racism and xenophobia and to promote mutual understanding and respect, particularly towards persons belonging to vulnerable groups, such as Roma, Sinti, migrants, asylum-seekers and refugees.

Appropriate measures must be taken to combat and sanction effectively the expression of racist and xenophobic views within the context of political discourse.

The authorities should pay all the attention needed to the dissemination of racism and prejudice through the media, while fully respecting the editorial independence of media outlets. The efforts made in this field by the media and their own supervisory bodies should be encouraged and supported, and increased efforts should be made to raise awareness among journalists of human rights, respect for cultural diversity and tolerance.

The authorities should also step up measures to increase awareness not only of the population at large, but also of civil servants, members of the police force and of the judiciary, of human rights, tolerance and mutual respect. They must ensure that any violation of human rights by law enforcement officers is effectively investigated and, where needed, prosecuted and appropriately sanctioned.

Additional measures must be taken to combat vigorously the growth of racism on the Internet and in sports events.

Situation of the Roma and Sinti

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee invited the authorities to step up as a matter of priority local and national efforts to ensure that Roma and Sinti living in camps had decent living conditions.

The authorities were also urged to draw up a comprehensive strategy of integration for Roma and Sinti, in consultation with those concerned, to end their placing in 'camps for nomads' and to guarantee access to housing, employment, education and health care.

The Advisory Committee invited the authorities to pay special attention to the specific needs of the various groups concerned – on the one hand preserving and developing the identity of Roma and Sinti traditionally present in Italy and, on the other, improving the living conditions of Roma having recently settled in the country.

Present situation

The Advisory Committee is deeply concerned about the fact that the living conditions of Roma and Sinti have continued to deteriorate and that their marginalisation and social exclusion have increased. It notes that, although only very few members of these communities share a nomadic lifestyle, these persons continue to live in camps for nomads and, in many cases, to move around in search of suitable accommodation and to experience forced evictions. Unfortunately, the policy pursued by the authorities favours the placement of these persons in 'camps for nomads', which perpetuates their segregation and marginalisation and opens the way to discrimination and hostility towards them.

The Advisory Committee is aware that the significant increase in the size of these communities following major influxes of Roma from the countries of Eastern Europe, particularly Romania and ex-Yugoslavia, including Kosovo, has made things more complicated for the authorities. They are currently faced with the difficulty of dealing with problems specific to heterogeneous groups, with a distinct legal status, within these communities: Roma and Sinti from Italy, non-nationals who are EU citizens and Roma from non-EU countries, persons with undetermined national status. It notes that some efforts have been made, in particular at the local level, to help these communities to overcome the many difficulties facing them and improve their living conditions.

The Advisory Committee remains deeply concerned that, despite efforts made by certain authorities and commendable support projects implemented by the NGOs, the conditions in which these persons live continue to deteriorate and they are faced with poverty, extreme hardship and discrimination in all fields: access to housing, employment, health care and the enjoyment of other social rights, such as education.

As regards housing, the Advisory Committee learnt that while the “authorised” camps enjoy more favourable living conditions and measures have been taken to improve the available amenities and access for children to education, the situation in the “unauthorised” camps remains deplorable: they lack the essential conditions required for a decent standard of living - water, electricity, transport, refuse collection. The persons living there receive no assistance whatsoever from the authorities. They are also confronted with hostility and even, in some cases, violence on the part of members of the majority population living in the neighbouring municipalities.

Serious difficulties and systematic discrimination are reported regarding access to employment for Roma and Sinti. While some improvements are reported in this field and, in some “authorised” camps, many Roma hold a work permit and are gainfully employed, the situation regarding the vast majority of members of these communities continues to give cause for concern.

The Advisory Committee also notes that the fact of living without any income in camps away from the rest of the population and the many prejudices towards them in society seriously affect the Roma and Sinti enjoyment of other rights such as access to health care, welfare benefits and education. (Regarding the situation of Roma in the field of education, see also the observations under Articles 12-14 below).

This situation of hardship continues to make these communities particularly vulnerable to abuse, exploitation and violence and contributes to their rejection and stigmatisation by certain sectors of Italian society. The situation is only exacerbated when measures are taken by the authorities to expel these persons from the camps, depriving them, in many cases without prior information or consultation and without any viable rehousing options, of even the most basic living conditions. The Advisory Committee notes with deep concern that forced evictions and the dismantling of “unauthorised” camps are continuing and that, in many cases, these evictions involve violent police intervention. Recent reports indicating that several thousand Roma and Sinti, currently occupying several hundred camps on the outskirts of Rome, are to be grouped together in only 13 camps, are a source of great concern to the communities concerned.

The Advisory Committee regrets to note that, overall, very little progress has been recorded in all these fields and that, on the contrary, the inequalities and manifestations of discrimination towards Roma and Sinti have intensified. Above and beyond the social climate of increased intolerance and hostility towards these communities, the Advisory Committee is particularly concerned about the approach favoured by the authorities in addressing these difficulties. While recognising that sectoral measures have been taken to improve the situation, the Advisory Committee notes with deep concern that, under an emergency decree issued in 2008, more and more decisions are taken in this framework by means of emergency measures. It also finds it disturbing that the actions taken under these orders are more akin to punitive measures than to forms of support for the communities in question. Like the Commissioner for Human Rights, the Advisory Committee considers that adopting a state of emergency and providing greater powers to the “Special Commissioners” and the police is not an appropriate way to deal with the needs of the Roma and Sinti populations. This is clearly not in line with the commitments undertaken by Italy under the Framework Convention.

The Advisory Committee is also concerned about the emphasis laid by certain representatives of the authorities, sometimes even in public statements, on the alleged danger posed to Italian society by “nomads” and about the fact that Roma and Sinti are lumped together and treated

systematically as a nomadic population. It furthermore notes the harmful impact of such an approach on these persons and the intensification of discriminatory and hostile attitudes towards them in society (see also comments under Article 3 above).

The Advisory Committee is also concerned about the fact that the authorities have not taken appropriate measures to deal with the question of the lack of identity papers affecting many Roma, including those born in Italy, and affecting in particular their enjoyment of various social and economic rights.

As it has already done in previous monitoring cycles, the Advisory Committee considers that the situation described above is not compatible with Article 4 and Article 6 of the Framework Convention and calls for immediate and effective action on the part of the Italian authorities, at all levels. The Advisory Committee has noted with interest, in this context, the collective complaint against Italy under the European Social Charter (Collective Complaint No 58/2009) submitted to the European Committee of Social Rights by the Centre on Housing Rights and Evictions (COHRE). It notes that the European Committee on Social Rights has already forwarded to the Committee of Ministers of the Council of Europe its report and conclusions on this complaint and its merits.

Recommendations

The Advisory Committee urges the authorities to adopt more resolute and effective measures to combat discrimination against Roma and Sinti.

A comprehensive strategy for the integration and protection of these persons must be developed and implemented without further delay. Appropriate positive measures should be taken in the different sectors in order to reduce the disparities between these communities and the rest of the population. The authorities are strongly encouraged to put an end to using emergency decrees and measures in tackling such systemic issues.

Effective measures should be taken as a matter of urgency to find solutions, in consultation with Roma and Sinti representatives, to the serious housing problems facing Roma and Sinti and to enable them to enjoy decent living conditions.

Representatives of the different groups should be involved systematically in the search for solutions, the implementation and monitoring of appropriate measures, so that the specific needs of the relevant groups are duly taken into account.

The Advisory Committee also calls on the authorities to take appropriate measures to allow Roma and Sinti to have access to identity papers.

17. Kosovo*

Opinion adopted on 6 March 2013

Article 4 of the Framework Convention

Legislative and institutional framework to combat discrimination and promote full and effective equality

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee noted *de facto* discrimination against persons belonging to national minorities, in particular Roma and Serbs, and strongly encouraged the authorities to ensure the effective and independent functioning of the Ombudsman's Office by respecting its independence, by allocating adequate human and financial resources, and by effectively implementing its recommendations. The Advisory Committee further urged the authorities to conduct awareness-raising activities on the guarantees and related remedies provided for in the 2004 Anti-Discrimination Law amongst the population at large, and ensure that legal professionals, including judges and prosecutors, were provided with targeted training in this respect.

Present situation

The Ombudsperson Institution remains engaged in its mandate to investigate complaints concerning human rights violations, including those based on discrimination. Competencies also extend to *ex officio* investigations and the issuance of general recommendations to other institutions in terms of their compliance with national and international human rights standards. The Advisory Committee welcomes the commitment and engagement of the Ombudsperson who is trusted by all communities as an independent voice. At the same time, it regrets the lack of respect paid to the Ombudsperson in presenting his annual reports to the Assembly and the fact that his recommendations are reportedly only rarely implemented. In addition, the Ombudsperson Institution continues to have only a limited number of staff with only 48 positions filled out of the requested 64. General administrative support, such as with regard to suitable premises both at central and regional level, and the provision of an adequate and duly independent budget in line with the Constitution, is also missing.

Most observers consider the volume of complaints to the Ombudsperson as moderate, given the limited trust in the judiciary and the range of human rights problems experienced by the population. According to the 2011 Annual Report, 1 453 complaints were received by the Institution, directed mainly against municipalities, courts and ministries. While this constitutes an increase in comparison with the 1 233 cases received in 2010, only 546 cases were considered further and investigations opened. This implies that a large number of persons still appeal to the Ombudsperson without being clear on his specific mandate and functions, despite efforts to increase awareness and outreach. In addition, it appears that the lack of attention paid by central and local institutions to the demands of the Ombudsperson, as well as to his recommendations and criticism, dissuades possible plaintiffs from approaching the Institution as informal means of seeking redress are considered more likely to be successful. The Advisory Committee expects that the Ombudsperson Institution will be paid adequate attention and respect and provided with the appropriate means to be able to effectively realise its important functions.

The Advisory Committee further observes that the 2004 Anti-Discrimination Law remains practically unknown among substantial parts of the population, despite some efforts, including by civil society, to raise awareness of the Law and train involved officials. While there is general agreement that the Law is comprehensive in defining the forms of discrimination as well as the protected grounds, its applicability in daily life is hampered by a lack of precision with regard to procedures and sanctions. As a result, overall very few cases or complaints are lodged and processed in courts. The Advisory Committee further regrets that no central system for the gathering of data and statistics on discrimination-related complaints or the access to rights of persons belonging to minority communities exist, which is indispensable to effectively respond to

the persistent reports of continued direct and indirect, including multiple, discrimination experienced by disadvantaged groups (see comments below and on Article 15). No specific by-laws or mechanisms for its implementation have been adopted. While other bodies have been created through separate instructions, such as the Human Rights Units at ministerial and municipal level, these units fall under the overall coordination of the Office of Good Governance under the Prime Minister and do not have clear instructions or a clear legislative basis concerning the protection from discrimination.

While welcoming that the Anti-Discrimination Law and the Law on Communities expressly provide for the possibility of special measures to be developed in order to promote the effective equality of disadvantaged groups, the Advisory Committee regrets that there appears to be no coherent strategy as regards the adoption and implementation of such measures and that the Centre for Equal Treatment, foreseen in Article 9.5 of the Anti-Discrimination Law has not been established. While quotas for persons belonging to minority communities exist in a number of spheres to promote their participation in public life, these are widely considered ineffective as well as subject to abuse (see comments below). The Advisory Committee notes that an assessment of the Anti-Discrimination Law has been prepared by the Commission on Human Rights, Gender Equality, Missing Persons and Petitions Committee of the Assembly, recommending that the Law be reviewed as part of the legislative strategy for 2013. It expects that due steps will be taken through this legislative review to provide more clarity and coherence with respect to the implementation of the Law, including as regards the promotion of effective equality through special measures, as also contained in Article 4.2 of the Framework Convention.

Recommendations

The Advisory Committee urges the authorities to provide adequate political support and resources to the Ombudsperson Institution to ensure that its mandate can be effectively and independently exercised as provided for by law.

The Advisory Committee calls on the authorities to take swift measures to ensure that the Anti-Discrimination Law is effectively implemented and applied by responsible institutions. This should include legislative measures to add clarity to its provisions, as well as increased awareness-raising and training activities among municipal officials and the public at large.

Freedom of movement and return process

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to make more efforts towards providing conditions for the freedom of movement of persons belonging to minority communities, by effectively ensuring their safety and by addressing their perceptions and fears through dialogue and inter-community trust-building measures. It further urged the authorities to demonstrate a stronger commitment to safe and sustainable return processes, in particular by promoting effective access to socio-economic and educational rights for returnees, including those who had been forcibly returned, and by allocating adequate financial and human resources to implement existing integration strategies.

Present situation

The Advisory Committee notes that the number of voluntary returns from within and outside the region have continued to decline since 2010. Only 970 voluntary minority returnees were registered in 2012 after 1 182 returned in 2011 and 2 318 in 2010. According to most interlocutors, the voluntary return process is generally considered complete with relatively few persons remaining registered as having indicated their intent to return. In its recent and comprehensive assessment of the voluntary return process, the OSCE Mission notes some positive developments related to the returns policy since 2010 but refers to inefficient and inconsistent implementation of the policy and legislative framework by municipalities which has a negative effect on the ability of returnees to effectively reintegrate in their place of origin. The Advisory Committee regrets that there is no comprehensive data collection on the number of returnees and analysis of their access to rights apart from the information collected by the UNHCR and OSCE Mission.

The establishment of the Municipal Offices for Communities and Return (MOCR) through Prime Minister Regulation in August 2010 is considered the most notable policy development affecting returns at municipal level. Equipped with some basic staffing and operational resources, these local coordination mechanisms are mandated to “protect and promote the rights of communities, the equal access of all communities to public services and the creation of conditions for sustainable return of refugees, displaced persons and repatriated persons,” by assessing the needs of returnees, providing information on their rights, and developing municipal returns strategies in order to provide municipal institutions with a framework to guide their activities in this area. The Advisory Committee welcomes this important step taken by the authorities to better coordinate and institutionalise return efforts at municipal level and expects that MOCRs will be provided with all necessary resources and support to fulfil their comprehensive mandate. In addition, attention must be paid at central level to ensure the regular coordination, monitoring and evaluation of the activities of the MOCRs, in consultation with representatives of minority communities (see below comments on Article 15). Finally, given the central role played by the MOCRs, it is imperative that they are suitably trained to perform their tasks, such as related to careful individual needs assessments of returnees which are crucial to successful integration.

The Advisory Committee welcomes the focus placed on reintegration and sustainability of return in the Strategy adopted in February 2010 by the Ministry of Communities and Returns, which maintains the institutional responsibility for the oversight of the return process. Efforts have been made, for instance, to support the development of small businesses and enterprises through the provision of grants and some vocational training to returnees, organised at municipal level through the MOCRs. There are reports, however, of continued obstacles faced by returnees as regards access to education and health, as well as other social services. Community representatives contend that MOCRs often pay insufficient attention to the specific needs of returnee children or the elderly and there are perceptions by returnees belonging to numerically smaller minority communities that the MOCRs are prioritising the needs of Serb returnees. The particular needs of returnees without property have been acknowledged through the adoption of relevant legislation in 2010. However, more concrete action is required to sustainably ensure adequate housing for returnees without property and resolve the situation of informal settlements, which continues to affect mainly persons belonging to the Roma community. The Advisory Committee is concerned by the refusal of some municipalities to allocate land to displaced families, as there is a general shortage of suitable municipal land after the privatisation of the most desirable plots.

According to interlocutors of the Advisory Committee, almost 95% of returnee families depend on the provision of social assistance, and unemployment, particularly in rural areas, is considered one of the main obstacles to sustainable return. While returnees of Serb or Roma origin who possess Serbian documents receive assistance from the Serbian Government and have access to health services and education in their language, others are relying on the social assistance provided by Kosovo* authorities which only becomes effective once they have obtained valid identity documents. The Advisory Committee refers to legislation that requires authorities to pay particular attention to the specific needs of persons belonging to minority communities, in particular the Roma, Ashkali and Egyptians. Targeted schemes should be developed to promote the access to rights of members of minority communities, including through positive measures, as explicitly foreseen in Article 4.2 of the Framework Convention. In addition, efforts should be made to discourage returnees from selling their property immediately after repossessing and providing incentives for them to remain in their places of origin.

The Advisory Committee further notes that the numbers of forced returns and assisted repatriations from Western Europe are consistently higher than those of voluntary returns, with the percentage of minority forced returns steadily increasing, particularly those belonging to the Roma, Ashkali and Egyptian communities. There are disquieting reports that the authorities are paying more attention to the reintegration process of persons returning from Western Europe as successful readmission is perceived as a tool for advancing visa liberalisation and EU accession. While welcoming efforts to improve the readmission process through a clearer assumption of responsibilities at municipal level, the Advisory Committee is concerned by the apparent establishment of two parallel reintegration systems that may create inequalities among returnees from Western Europe and those coming from within Kosovo* or the region. It reminds the authorities of the overriding obligation to promote full and effective equality among all persons belonging to minority communities, in line with Article 4 of the Framework Convention.

In addition, security is still an issue of deep concern to many returnees and has a strong impact on their freedom of movement. The responsiveness of municipal authorities differs greatly from concerted and genuine engagement such as reported in Ferizaj/Uroševac and Gjiilan/Gnjilane municipality to more dismissive attitudes in other areas, such as in Pejë/Peć municipality. Overall, there appears to be still too little interaction between returning and receiving communities, with locations where such communication was initialised even prior to return reporting better overall security conditions. Limitations to the freedom of movement are particularly persistent for Albanian communities in mixed settlements in north Mitrovica/Mitrovicë and the three northern effectively Serbian-administered municipalities, who face security concerns in their access to most services as well as to employment opportunities, and who depend mainly on south Mitrovicë/Mitrovica for hospitals and secondary education.

Recommendations

The Advisory Committee calls on the authorities to improve their coordination and supervision of MOCRs and ensure that their responsibilities are fully and effectively implemented. Efforts must be made to increase the awareness and know-how of MOCRs to respond adequately to the specific needs of returnees, and make appropriate financial and human resources available.

The Advisory Committee further calls on the authorities to increase their efforts to promote the sustainable integration of returnees through renewed attention to the provision of access to social services and employment opportunities, and by ensuring that all returnees are equally attended to in accordance with their specific and individual needs. More efforts must be made to prepare receiving communities and to promote communication and interaction between members of different communities throughout Kosovo*.

Access to justice and property restitution

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to take vigorous measures to reduce the backlog of cases in the justice system, 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.

Present situation

While considerable progress has been made overall in terms of judicial reform and the development of an independent, professional judiciary service, the Advisory Committee regrets that the backlog of court cases is still enormous with 221 528 pending cases at end September 2012, the majority in municipal courts, while the number of judges appointed continues to be insufficient. Low qualifications and lack of motivation are cited by a number of interlocutors as additional reasons behind the apparent inability of the justice system to make progress with regards to the permanent backlog of cases. The Judicial Institute continues to train new and serving judges, including with support of international and national non-governmental organisations. However, much more substantial training, including for prosecutorial staff and legal professionals more broadly, is still required. The Advisory Committee remains, in addition, concerned by reports that the lack of implementation of the language legislation within the judiciary puts persons belonging to minority communities at an additional disadvantage, as the choice of language of proceedings apparently depends on the discretion of the judge rather than the demand and needs of the claimant. As a result, minority community members have very limited trust in the capacities of the justice system, which has a strong impact on their perception of their security and access to rights in general (see above comments). The Advisory Committee is deeply concerned by this lack of trust in the rule of law and points to the fact that the non-execution of judicial decisions and the excessive length of court procedures are the main shortcomings identified by the Ombudsperson in his 2011 Annual Report.

A high number of the pending court cases continue to relate to property issues and the restoration of property rights, and there is a strong perception among the public that courts are not paying sufficient attention to the illegal occupation of houses. With regard to private property claims that relate to the period of the armed conflict, the Advisory Committee welcomes the fact that the Property Agency has completed over 35 000 cases out of some 42 000 lodged by the end of 2007 and is beginning, jointly with the Kosovo* Police Service (KPS), to enforce its decisions, including through evictions. It notes, however, that enforcement remains particularly problematic in the northern part of Kosovo*. This has an impact on the situation in south Mitrovicë/Mitrovica municipality, as many of the illegal occupants there actually own property in the northern part that is also illegally occupied. Another problem still surrounds the issue of repossession of socially

owned property, even after adoption of relevant legislation, as the cadastral records where occupancy rights were registered have yet to be returned from Serbia. In addition, a comprehensive policy and legislative response may be required to solve some property aspects, such as related to previously nationalised property that is in the process of being privatised, while claims of social occupancy rights have not yet been ascertained. The Advisory Committee notes that the Property Agency as a mass claims processing mechanism is not in a position to solve such cases and welcomes the appointment in August 2011 of a national property rights coordinator. It considers that he should receive all necessary support from the authorities and relevant international organisations to ensure that the very complex property issues that remain are comprehensively considered in line with relevant international standards and suitable steps are taken without undue delay.

The Advisory Committee remains in particular concerned by the access to rights issues faced by internally displaced persons. Despite the reportedly still high numbers of internally displaced, approximately 980 of whom are living in dire conditions in 38 collective centres, there are no special provisions to address the particular needs of IDPs during all phases of their displacement, apart from those generally relating to the facilitation of return. The return of IDPs in Kosovo*, however, constitutes only a small part of the overall return figures, which appears to indicate that return may not be a feasible or desirable option for many of the remaining IDPs. A large number of the remaining IDPs may therefore rather require assistance in the area of displacement in order to access social rights. Some remain registered as property owners, which prevents them from obtaining social assistance, despite the fact that their property is illegally occupied. There is no institutional focal point for the promotion of the rights of IDPs apart from the MOCRs who focus mainly on the facilitation of return. The Advisory Committee considers that more efforts should be made to ensure that IDPs are suitably protected throughout all phases of their displacement and including as regards the facilitation of local integration where so desired.

With regard to war crimes and missing persons, the Advisory Committee welcomes the establishment of an inter-ministerial working group in June 2012 on dealing with the past and reconciliation. The purpose of the working group is to deal with gross human rights and humanitarian law violations in the past, while taking into consideration the views of all communities, and to promote reconciliation and lasting peace by “ensuring accountability, serving justice,... facilitating truth-seeking, ..., and taking all measures needed to restore confidence in the institutions of the State and implementing the rule of law...”. The Advisory Committee underlines the importance of such an initiative, which should be appropriately supported by relevant international organisations, in order to promote a process of reconciliation and healing among all communities and restore trust in the institutions and the justice system.

Recommendations

The Advisory Committee urges the authorities again to take all necessary measures to reduce the continuing and immense backlog of court cases, many of which still relating to property issues, and to guarantee effective access to justice for all. Efforts to establish efficient, professional and independent judiciary and prosecution services must be intensified so as to ensure that public trust in the rule of law can develop.

The Advisory Committee further calls on the authorities to develop appropriate legislative and policy responses to rights issues that remain inadequately addressed, such as the protection of IDPs during all stages of displacement, as well as more complex issues related to property and compensation.

The Advisory Committee invites the authorities to take all necessary measures to support the inter-ministerial working group on dealing with the past and reconciliation in its important task of promoting inter-ethnic understanding and restoring trust in the justice system.

Full and effective equality of Roma, Ashkali and Egyptians

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to identify an adequate and swift solution for the Roma, Ashkali and Egyptian population of lead-contaminated camps in northern Kosovo*. In addition, it called for resolute and strategic measures to promote the effective equality of persons belonging to these disadvantaged communities in accessing employment and social services, as well as with regard to the issuance of identity documents.

Present situation

The Advisory Committee welcomes the fact that Osterode camp was finally closed at the end of December 2012, and all remaining residents relocated. It further is pleased to observe that continued efforts are underway in 2013 to close the IDP camp in Leposavić/Leposaviq where living conditions are appalling, and encourages close consultation with the involved communities to ensure that their concerns and traditions are duly considered in the relocation process. It further expects that south Mitrovicë/Mitrovica authorities will alter their initial resistance to provide accommodation to families that are not originally from the municipality. The Advisory Committee further underlines that lead contamination continues to be an issue of grave concern, particularly among children, that must be closely monitored and adequately treated. According to Mercy Corps, 16 out of 229 affected children exhibited high contamination levels and received medical treatment, while the others were provided with vitamin supplements. Attention must, however, equally be paid to the long-term health impacts that have likely been caused by the prolonged exposure to lead contamination.

The Advisory Committee notes that one year after adoption of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities by the authorities, in December 2009, an Action Plan for the Implementation of the Strategy was endorsed, containing concrete measures to be taken by central and local institutions to address the identified challenges faced by the three communities in terms of inequality and social exclusion, and the lack of awareness of rights among the communities, relevant officials and the public at large. The Advisory Committee welcomes that the Action Plan also calls for more research and evaluation of data related to the living conditions of persons belonging to the three communities, and foresees measures to promote the specific cultural heritage, traditions and identity of the communities. The Plan contains a detailed timeline and budgetary estimates for its implementation but there is no separate budget through the Ministry of Finance. Allocations are made individually by relevant ministries as well as based on international donations. Implementation has, according to a number of reports, been sporadic and often dependent on individual initiatives rather than institutionally coordinated efforts. The

Advisory Committee notes recent efforts of the authorities to join the Decade of Roma Inclusion 2005-2015, which may provide for a regional exchange of experience, coordination and support for the implementation of the Action Plan.

The Action Plan emphasises the fundamental role of central-level coordination. However, the modalities in practice of the coordination between central and local levels appear unclear. The Ministry of Communities and Return chairs the inter-ministerial working group on the implementation of the Strategy, while the Deputy Prime Minister heads the inter-ministerial steering committee for the implementation of the Action Plan. The Advisory Office on Good Governance (AOGG) and the Office for Community Affairs under the Office of the Prime Minister have central responsibilities to ensure efficient co-operation among relevant ministries, with the AOGG chairing a technical working group that is also tasked to report biyearly on progress. Individual ministries have contributed to the implementation of the Action Plan (see below comments on Articles 12 and 15), but the lack of straightforward coordination and information exchange limits ownership and accountability and results in a disconnect between central institutions and local officials. Reportedly, some municipal authorities are not fully aware of the Action Plan and the responsibilities it entails for them, particularly with regard to participation, culture, media and information. Efforts must be made at central level to streamline and increase coordination so that municipal authorities are duly informed and instructed to perform according to their responsibilities under the Action Plan.

The Advisory Committee remains particularly concerned about access to documentation for persons belonging to the Roma, Ashkali and Egyptian communities, as it is still difficult for many individuals to provide the required evidence for registration at birth (parents' identity documents, legally registered residence, as well as fees) as some were never registered for generations. Additionally, the system of civil registration is unevenly applied. The legislation provides, for instance, that in the case of destroyed registers, statements by witnesses can be accepted. However, in the absence of clear guidance on the implementation of this procedure, municipalities continue to apply it in an inconsistent manner. The Advisory Committee welcomes initiatives organised by civil society and supported by a number of municipalities to engage in awareness-raising campaigns and offer periods of free registration services for undocumented individuals, as also foreseen in the Action Plan. In view of the crucial disadvantages suffered through lack of documentation given the risk of statelessness, possible denial of access to health care, education and other public services, and problems in resolving issues of property restitution or compensation, such efforts must be expanded and concrete measures agreed in close consultation with community representatives to effectively reduce the number of affected individuals.

Recommendations

The Advisory Committee calls on the authorities to intensify their efforts towards the integration of the Roma, Ashkali and Egyptian communities by allocating appropriate resources from the Kosovo* Consolidated Budget and streamlining central coordination to ensure that all municipalities are informed of and instructed to implement the Strategy and Action Plan. Municipal authorities must renew their commitment to ensure full and unhindered access to personal identity documents for all persons belonging to Roma, Ashkali and Egyptian communities, in particular birth certificates.

The Advisory Committee further urges the authorities to take all necessary steps to facilitate the closure of the last IDP camp in Leposavić/Leposaviq without further delay and to ensure that appropriate medical treatment is provided to all persons in need.

18. Lithuania

Opinion adopted on 28 November 2013

Article 4 of the Framework Convention

Protection against discrimination and promotion of full and effective equality

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to fully and properly implement the Law on Equal Treatment and to ensure that the exception from the protection against discrimination relating to state language proficiency did not have a discriminatory effect on persons belonging to national minorities.

Present situation

The Advisory Committee welcomes the fact that the scope of the Law on Equal Treatment was broadened in June 2008 to include national origin, language, convictions and social status, albeit still not citizenship. It further notes the shifting of the burden of proof in cases of alleged discrimination following those amendments. It regrets, however, that despite the recognition of the right of NGOs to represent victims in court in the Law, the engagement of associations in judicial proceedings is often still difficult, as specific procedures for this representation are not foreseen in relevant Procedural Codes. The Advisory Committee understands from national minority representatives that these practical difficulties for NGOs to act in support of victims in court are discouraging persons belonging to national minorities, such as the Roma, from lodging complaints in cases of alleged discrimination, as they do not feel sufficiently confident of their chances to obtain redress. Overall, minority representatives and other interlocutors expressed concern about the lack of strategy for the promotion of effective equality of persons belonging to national minorities in Lithuania. According to a number of interlocutors of the Advisory Committee, the focus of recent equality-related efforts has been on migrants and various social groups where some pressure from the European Union is felt, while national minorities and the broader promotion of effective equality in society have been considered less of a priority, with ad hoc interventions replacing broader strategic engagement.

The Advisory Committee further notes that the Equal Treatment Ombudsperson, whose mandate was expanded as a result of the above-mentioned amendments, was designated as Lithuania's specialised body on equal treatment and entrusted with the main responsibilities in this field in line with the EC Equality Directives. Despite a modest increase in complaints to the Equal Treatment Ombudsman in recent years, the Office still receives few cases alleging discrimination, with an average of 10-15% involving the grounds of race, ethnicity, or language. While the Office has engaged in various training and awareness-raising activities concerning the Law on Equal Treatment and its mandate, and the increase in complaints received suggests some progress, the Advisory Committee had the impression from its interlocutors that knowledge of and trust in the functions of the Ombudsperson among minority communities remains rather limited. While the

Office has made use of the authority to initiate investigations in a number of relevant cases, minority representatives feel that these investigations are not always prompt or determined enough, nor do they result in effective sanctions. Reportedly, the Ombudsperson rarely issues fines but usually resorts to warnings or the formulation of recommendations. In addition, the continued absence of at least mobile representation of the Equal Treatment Ombudsperson in the regions further diminishes access for persons belonging to minority communities to seek redress in possible cases of discrimination. It is further regrettable that the Office has accepted complaints from civil society organisations related to equal treatment violations only if a specific victim has been referred to.

The integration of Roma and the promotion of their full and effective equality has been the focus of consecutive programmes and action plans, which have, according to most observers, achieved only limited success, partially due to insufficient funding and partially because of the lack of a comprehensive approach. In response to the European Commission Communication relating to national Roma Integration Strategies of April 2011, the Ministry of Culture, in consultation with other ministries and representatives of the Roma communities developed the “Action Plan on Roma Integration into Lithuanian society 2012-2014”, which was adopted in March 2012. The Advisory Committee notes with concern that the Action Plan has been criticised quite substantially by civil society organisations, including Roma representatives, that it still lacks an overall coordinated approach, does not address the critical issues of housing and access to health (see below comments on Article 15), and that there was only insufficient consultation with the community during its preparation. In addition, the Plan is considered too vague in terms of the measures foreseen in the education and employment spheres, and disregards established issues of concern among the community, such as the acquisition of identity documents, in particular for women.

The Advisory Committee welcomes the coordinated response of civil society organisations to the Action Plan and the concerted efforts made by the Ministry of Culture to engage in broader consultations with representatives of the Roma communities and ensure that the upcoming Plan (2014-2016) presents a better and more coherent strategy for the holistic promotion of full and effective equality for Roma. In this regard, the Advisory Committee is concerned by the apparent lack of engagement from Vilnius Municipality, where the largest settlement of Roma is located, in the planning stages and reminds the authorities that the close involvement of all relevant institutions, including also the Ministry of Education and the Ministry of Social Security and Labour, is indispensable for the development and subsequent implementation of a sound plan. The Advisory Committee further considers it essential to ensure that community representatives are directly involved in the preparation and implementation of the Action Plan, as well as its monitoring and evaluation, and that their concerns and views are effectively taken into account throughout all phases.

Recommendations

The Advisory Committee calls on the authorities to provide adequate human and financial resources to the Equal Treatment Ombudsperson and ensure through targeted measures that awareness of and trust in its mandate and role is enhanced within the broader population, including importantly among persons belonging to national minorities.

The Advisory Committee urges the authorities to continue their close consultation with Roma representatives and ensure that the preparation of the next Action Plan for Roma Integration is effectively co-ordinated with all involved actors, including relevant municipalities, that it comprehensively addresses the communities' main concerns, and that their representatives are closely involved in all phases of its implementation.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to collect data on the situation of persons belonging to national minorities in all relevant spheres and in line with personal data protection standards, paying particular attention to numerically smaller minorities as well as the gender dimension.

Present situation

The Advisory Committee regrets that there is still no comprehensive system for the collection of disaggregated data on the access to rights of persons belonging to national minorities in different spheres of life. It underlines again that such data collection is indispensable for the development of effective policies for the promotion of equality. While it appreciates the information available now through the 2011 census, it considers that such overall assessments must be made more regularly than every ten years to ensure that reliable and disaggregated data is available to the authorities for the design of targeted policy measures. The Advisory Committee notes that some data is collected with regard to the access to employment and social insurance of Roma. However, the available information seems to be collected by different bodies, such as the Ministry of Social Security and Labour and Vilnius Municipality, without systematically sharing the data in line with relevant personal data protection standards for the purposes of a comprehensive evaluation (see also comments on Article 15 below).

The Advisory Committee welcomes the increased engagement of independent researchers and experts to gather information and data on the situation of persons belonging to national minorities. It is also pleased to note that the surveys and indicative studies undertaken by academic institutions, such as the publicly funded Institute of Ethnic Studies, are frequently commissioned by government bodies and used as reference documents in relevant reports and policy development.

Recommendations

The Advisory Committee urges the authorities to develop a comprehensive system, in line with relevant national and international data protection standards, to systematically collect disaggregated data on the access to rights of persons belonging to national minorities in the different spheres, including education, employment, and access to health and social services, to ensure that effective strategies for the promotion of full equality can be developed.

The Advisory Committee further invites the authorities to continue to support independent research on issues pertaining to minority rights protection and to use the findings, in consultation with minority representatives, for the development of targeted policies aimed at the promotion of full and effective equality.

19. Moldova

Opinion adopted on 26 June 2009

Article 4 of the Framework Convention

Combating discrimination

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee noted that few cases of discrimination on grounds of ethnic origin had been reported and that there was, in general, little public awareness of discrimination-related issues. It also underlined the need to provide additional support to the work of the Parliamentary Advocates.

Present situation

The Advisory Committee notes with interest that steps have been taken with a view to improving the legislative framework to prevent and combat discrimination. A draft framework law against discrimination has been elaborated, which should contribute to making the existing legislation more comprehensive and more accessible. The Advisory Committee is, in particular, pleased to note that the draft law introduces the shifting of the burden of proof and that it establishes that positive action aiming at promoting effective equality should not be considered as discriminatory.

Additionally, amendments to Articles 176 and 346 of the Penal Code, if adopted, should increase the scope of protection against discrimination and thus, enhance possibilities to sanction discriminatory acts, including discrimination on grounds of ethnic or national affiliation.

The Advisory Committee welcomes these important developments. It expects that both the new anti-discrimination law and the amendments to the Penal Code will be adopted by the Parliament with no further delays.

The Advisory Committee notes that few cases of discrimination on grounds of ethnic or national affiliation are being reported, even though such cases have been brought to the attention of the Advisory Committee by different sources, especially on grounds of belonging to the Roma minority. The limited number of reported cases of discrimination could be explained by various factors, including the absence of an official system of monitoring of discrimination and racism and insufficient awareness of this problem, both among potential victims, the judiciary, law enforcement institutions and the society at large. Against this background, the Advisory Committee welcomes the fact that a new Human Rights Action Plan for 2009-2011 is being elaborated and that it should, according to the information provided to the Advisory Committee, include a chapter on combating discrimination.

The Advisory Committee notes with satisfaction that the Parliamentary Advocates have continued to play an important role in the protection of human rights, including minority rights. Regional offices have been opened, which have improved access to this institution. The Advisory Committee notes with particular interest the commitment of the Parliamentary Advocates to raise awareness of discrimination in society. It is of the opinion that it is essential for the authorities to provide all the support required for this institution to continue to fulfil its mission effectively, both centrally and locally.

Recommendations

It is crucial that the new anti-discrimination law be adopted as a matter of priority. Monitoring of discrimination should also be carried out by the authorities on a regular basis. Moreover, the Advisory Committee invites the authorities to ensure full and effective implementation of the forthcoming Human Rights Action Plan (2009-2011), including on combating discrimination.

The Advisory Committee calls on the authorities to continue to provide adequate support to the Parliamentary Advocates so as to enable them to work efficiently and independently on preventing and combating all forms of discrimination.

Situation of the Roma

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee was concerned by the socio-economic difficulties faced by persons belonging to the Roma minority, often resulting in social exclusion, marginalisation and isolation from society. Discrimination against them was also reported.

Present situation

Various sources indicate discrimination against Roma resulting in unequal opportunities for them in various fields, such as access to employment, housing, health care, education and access to land as a result of the past privatisation process (see also remarks in respect of Article 15 below). The Advisory Committee also notes with concern that Roma suffer from a general lack of information, including on their rights, and lack of access to justice. The Advisory Committee is deeply concerned by the fact that the situation seems not to have improved since the previous cycles of monitoring.

During its visit to Moldova, the Advisory Committee was informed by non-governmental sources that cases of non-registration of Roma children at birth are still reported, for various reasons ranging from lack of means to cover the late registration fees to birth while the family is working abroad. The lack of registration, resulting in lack of identity documents, has serious consequences for those concerned and it can *inter alia* lead to exclusion from health care and social protection. The Advisory Committee notes that the authorities are reviewing the situation in this respect and calls upon the authorities to ensure that, where such cases are identified, they are remedied as a matter of priority.

Recommendations

The Advisory Committee urges the authorities to redouble efforts to combat inequalities facing part of the Roma population. In doing so, they should emphasise measures aiming at combating discrimination in various areas. Awareness-raising on their rights should be undertaken and measures should be taken to improve their access to justice.

The Advisory Committee calls on the authorities to pay particular attention to possible instances of lack of identity documents among persons belonging to the Roma minority and ensure that effective and swift measures are taken to remedy such problems as a matter of priority.

Data collection

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee noted that there was a lack of reliable data on the situation of persons belonging to national minorities.

Present situation

The Advisory Committee notes with satisfaction that the data resulting from the population census of 2004 partly alleviates the lack of information on persons belonging to national minorities. However, it appears that the data related to language and ethnic origin/nationality is not entirely reliable as the approach of some enumerators was not impartial in conducting the census interviews. Moreover, there was a lack of clarity and information regarding the questions on ethnicity/language, which allegedly misled some respondents belonging to national minorities. Controversies also persist on the total number of persons belonging to the Roma minority.

The 2004 census is, to date, the only official source of statistical data disaggregated by ethnic affiliation. The Population Register also contains information on the ethnic origin of the persons registered, based on replies to an optional question, but it is still under construction, according to the information received by the Advisory Committee from the authorities. No other official statistical data disaggregated by ethnic origin is being collected by the authorities. The authorities informed the Advisory Committee that they currently lack resources to do so.

Against this background, the Advisory Committee is of the opinion that there is a need for additional, reliable and up-to-date information on the socio-economic and educational situation of persons belonging to national minorities. The lack of such data hampers the authorities' capacity to design targeted and adapted measures to remedy existing problems facing persons belonging to national minorities. This is particularly problematic as far as the Action Plan for Roma is concerned, as it was elaborated on the basis of the 2004 census results whereas estimates of the Roma population are somewhat higher (see paragraph 54 above).

The Advisory Committee recalls that the collection of data disaggregated according to ethnic origin, for instance through labour force or household surveys, or through sociological surveys and studies, should effectively contribute to better policy-making on minority-related issues. It also wishes to remind the authorities of the importance, when information about individuals' ethnic origin is collected, processed and disseminated, of compliance with the safeguards which appear *inter alia* in Recommendation (97) 18 of the Committee of Ministers concerning the protection of personal data collected and processed for statistical purposes.

The Advisory Committee notes that the next population census is scheduled for 2012. The recommendations prepared by the International Expert Group on the Monitoring of the 2004 Census, notably those regarding the collection of data on the ethnic origin and language, form a useful basis for the preparation of the next census. It highlights the need for persons belonging to national minorities to be involved effectively, and at an early stage, in the preparation of this census. It is particularly important to involve them in the preparation of census forms in various minority languages and to consult them on entries, as the lack of clear and transparent definitions has been highlighted as one of the major problems.

Recommendations

The Advisory Committee calls on the authorities to collect further information on the situation of national minorities, while fully respecting international standards in the field of personal data protection.

The authorities should also ensure that representatives of national minorities are effectively involved in the preparation of the next population census and that international recommendations regarding the conduct of population census are followed.

20. Norway

Opinion adopted on 30 June 2011

Article 4 of the Framework Convention

Anti-discrimination legislation: legal framework and institutional structures

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee stressed the need firstly to raise public awareness of the legislative framework for combating discrimination and secondly to grant the Ombudsperson the necessary resources for carrying out her functions.

Present situation

The Advisory Committee welcomes the amendment, in 2009, to the Anti-Discrimination Act of 2006 which aims at providing better guarantees of full and effective protection against discrimination. Henceforth, all public and private sector employers employing over 50 workers are required to organise promotion and awareness-raising activities in their companies and to assess the impact of these measures annually. This new responsibility should improve anti-discrimination awareness in the work place and stimulate a fairer human resources policy on the part of employers.

The Advisory Committee also welcomes the fact that a proposal to draw up a comprehensive law on non-discrimination is currently under consideration. This would create a consolidated text comprising the Anti-Discrimination Act of 2006 and the various amendments made to sectoral legislative and regulatory provisions in this field.

The Advisory Committee's interlocutors in the Jewish, Kven and Skogfinn minorities have not reported suffering discrimination, unlike persons belonging to the Romani/Tatars minority who often consider themselves victims of discriminatory acts. An identical situation exists regarding persons who belong to the Roma minority.

In this context, the Advisory Committee takes note of the low number of complaints of discrimination based on ethnic origin lodged with the Equality and Anti-Discrimination Ombudsperson established in 2006. Over the period 2006-2009, the Ombudsperson examined only 11 complaints and performed counselling in 47 cases. According to the Advisory Committee's interlocutors, the Ombudsperson's office lacks the resources necessary to increase its visibility and perform its proactive role, particularly in respect of persons belonging to national minorities.

The Advisory Committee has been informed that persons belonging to the Roma and Romani/Tatars minorities, who consider themselves victims of discriminatory acts, hesitate to approach the Ombudsperson either because they have insufficient knowledge of the legislation in force and of the available remedies, or because they consider the Ombudsperson's means of action unsuited to their needs and their itinerant lifestyle. Several interlocutors also regretted that

the Ombudsperson is not able to grant legal aid to alleged victims of discriminatory acts in spite of requests in this regard.

The Advisory Committee considers that the implementation of the legislative framework for combating discrimination would be strengthened if the Ombudsperson's work were the subject of awareness-raising campaigns aimed at society as a whole and especially at the groups most exposed to discrimination.

Recommendations

The Advisory Committee encourages the authorities to increase public awareness about the work of the Equality and Anti-Discrimination Ombudsperson's office and to provide the additional resources which this office needs to carry out its mission effectively. Additional efforts should also be made to support persons belonging to national minorities who wish to obtain legal aid in order to exercise their rights in alleged cases of discrimination

The Advisory Committee also encourages the authorities to pay close attention to the Ombudsperson's request to expand its mandate in order to be able to grant legal aid to persons who consider themselves victims of discriminatory acts.

Roma and Romani/Taters

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the authorities were encouraged to step up their efforts to remove the difficulties encountered by Roma and Romani/Taters in the fields of housing, employment and education.

Present situation

The Advisory Committee notes with satisfaction that the authorities have taken several important measures over the last few years to improve the situation of Roma and Romani/Taters in several areas including housing, employment and education. It notes in particular the value of the project set up to address these issues by the municipality of Oslo, offering personalised training courses to adults to support their integration in the labour market (see also the comments under Articles 6, 12 and 15 below). Moreover, a 2009-2012 Action Plan for Equality and Prevention of Ethnic Discrimination introduces 66 measures to facilitate access to welfare entitlements and services for migrants and persons belonging to national minorities. This plan is also aimed at improving knowledge of the extent and the causes of the discrimination suffered by these groups so as to remedy it through targeted policies, which should have a positive impact on the vulnerable situation of Roma and Romani/Taters (see also the comments under Article 3 above).

The Advisory Committee notes that despite the considerable progress achieved, many Roma and Romani/Taters are still victims of discrimination in access to accommodation. It is especially concerned over indications that members of these groups are often faced with difficulties during their seasonal travel. It would seem that many owners of commercial camping sites deny them access or evict them, thereby preventing these groups from stopping when required (see also comments in paragraph 72). Several interlocutors also mentioned a discriminatory attitude on the part of the police force when it is summoned, by persons belonging to these groups, who wish to exercise their right to make use of a commercial camping site on the same terms as all other persons. The Advisory Committee considers that this discriminatory attitude from law

enforcement officers is incompatible with the obligations of the authorities to implement the provisions of Article 4 of the Framework Convention.

Recommendations

The Advisory Committee calls upon the authorities to take resolute measures to improve the situation of persons belonging to the Roma and Romani/Tatars minorities during their seasonal travel.

The Advisory Committee calls upon the authorities to ensure that all forms of discrimination against persons belonging to the Roma and Romani/Tatars minorities in the provision of services be firmly opposed. Discriminatory attitudes from the police must also be effectively and appropriately sanctioned.

The authorities should ensure that the policies and programmes intended to improve the situation of Roma and Romani/Tatars are implemented effectively in close consultation with the persons concerned.

21. Poland

Opinion adopted on 28 November 2013

Article 4 of the Framework Convention

Legal and institutional framework for prohibiting discrimination

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee asked the authorities to provide appropriate resources, including the financial means to the Office of the Government Plenipotentiary for Equal Treatment, which would allow it to intensify monitoring of alleged cases of discrimination, hostility on ethnic and national grounds and racial or ethnic hatred.

Present situation

The Advisory Committee notes with satisfaction that legislation against discrimination, adopted prior to Poland's accession to the EU was further strengthened by the adoption in 2010 of the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (hereafter the Anti-Discrimination Act – ADA). The Act prohibits discrimination on the grounds of sex, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. The Advisory Committee notes in particular the shifting of the burden of proof in cases of alleged discrimination and the provision enlarging the scope of application of the law to private relations, thus including also horizontal effects into non-discrimination legislation.

The Act defines the role expected of the Commissioner for Civil Rights Protection (Ombudsman) and the Government Plenipotentiary for Equal Treatment. The former, in accordance with the Law on the Ombudsman may intervene in individual cases by demanding initiation of civil or administrative proceedings (with the same rights as those of a prosecutor) and to demand that an authorised prosecuting attorney initiate preparatory proceedings in cases involving crimes

prosecuted *ex officio*. The Commissioner for Civil Rights Protection (Ombudsman) thus fulfils some of the tasks required of the equality body under the EU Equality Directives.

The Advisory Committee notes that the Anti-Discrimination Act places responsibility for implementation of government equality and non-discrimination policy on the Government Plenipotentiary for Equal Treatment on equal treatment, including counteraction of discrimination on recognised grounds, analysing and evaluating the legal and social situation with regard to equal treatment and initiation and coordination of the government's action to ensure equal treatment. The Plenipotentiary also undertakes awareness raising activities and promotes equality.

In this context, the Advisory Committee is pleased to note the adoption on 3 October 2013 by the Government, upon the proposal of the Plenipotentiary for Equal Treatment, of the National Programme for Equal Treatment for 2013-2016. This is the first comprehensive document aiming to cover all areas of life, unlike prior specific programmes which concentrated on equality between sexes or aimed to combat racism or discrimination based on ethnic or national identity. It is also noted that the Plenipotentiary is planning to establish regional (*voivodship*-based) plenipotentiaries modelled on the *Voivods'* plenipotentiaries for national and ethnic minorities (see also under Article 15 below).

The Advisory Committee notes, however, that neither the Government Plenipotentiary for Equal Treatment nor the Commissioner for Civil Rights Protection (Ombudsman) are entitled to intervene or mediate in cases involving two private parties.

Recommendation

The Advisory Committee calls on the authorities to ensure that the Office of the Government Plenipotentiary for Equal Treatment and the Office of the Commissioner for Civil Rights Protection (Ombudsman) are granted the support they need to carry out their roles effectively.

Promotion of full and effective equality of Roma

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee asked the authorities to take enhanced measures to prevent and combat discrimination and the social exclusion of the Roma and in particular to make every effort, in consultation with those persons concerned, to improve the situation of the Roma in fields such as employment, housing and education, including eliminating segregation and increasing awareness of their culture and needs.

The Advisory Committee also asked the authorities to tackle vigorously any discriminatory practices affecting Roma pupils and teachers, including through public awareness-raising campaigns and training programmes for persons concerned.

Present situation

The Advisory Committee welcomes the authorities' commitment to implement the National Programme for the Roma Community in Poland (2004-2013) and as well as plans for its continuation in the years 2014-2020. The National Programme has been elaborated by the Team

on Roma Issues within the Joint Commission of Government and National and Ethnic Minorities, with the participation of Roma members of the Joint Commission and with the input of Roma organisations. It has to be noted that in addition to 85 million zloty (€20.2 million) allocated by the Minister of Administration and Digitization to this programme, other national and European Union funds have been used in specific fields. The Ministry of Education was responsible for the disbursement of the education subsidy for Roma children (93.6 million zloty (€17.8 million)) in the same period and specific measures to support education of Roma children by employing supporting teachers, educational assistants, providing scholarships, textbooks and school accessories free of charge (6.3 million zloty (€1.5 million)). Under the Operational Programme Human Capital 74.7 million zloty (€17.8 million) were allocated to support professional activity and social integration of the Roma.

The main thrust of the National Programme has been placed on education of Roma children. In order to achieve this, approximately over 50 Roma community centres have been established, in addition to school clubs subsidised by the Ministry of Education. Particular emphasis has been placed on the financing of kindergartens which are seen as the necessary prerequisite for successful integration of Roma children in primary schools. The Advisory Committee regrets to note, however, that in spite of these efforts Roma children are disproportionately placed in special education schools (for more details see under Article 12 below). This practice is incompatible with Article 4, paragraph 2 and Article 12, paragraph 3 of the Framework Convention.

The Advisory Committee notes that regardless of the efforts undertaken in recent years, the educational results for Roma children lag far behind those of the other national minorities and the Polish population in general (see more detailed remarks under Article 12 below).

The Advisory Committee also notes with regret that unemployment figures for the Roma demonstrate that the various initiatives and schemes, undertaken under the National Programme for the Roma Community and the Operational Project 'Human Capital' have not yielded tangible results and that a large majority of the Roma remain excluded from the labour market. According to the State Report the unemployment rate for Roma was 30% compared to 11% nationwide, indicating a pattern of discrimination. This is in contrast to all other national minorities for whom the figures show lower unemployment rates than that of the Polish majority.

Also, Roma representatives continue to report ongoing discrimination in access to suitable social housing, health care, racial profiling by the police and discriminatory attitudes on the part of local administrative and law enforcement authorities. Biased media reporting has, on a number of occasions, fuelled local conflicts, which in some cases escalated into physical attacks against Roma and their property.

Recommendations

The Advisory Committee calls on the authorities to increase efforts to prevent and to combat the inequality and discrimination suffered by the Roma. In particular, effective steps must be taken to prevent children from being placed in special schools. The authorities must continue their efforts, in particular at local level, to improve the employment opportunities of Roma and to promote their integration into society.

The authorities should thoroughly investigate any complaint of alleged discrimination of Roma in access to employment and provision of public benefits and services. If discriminatory acts are confirmed, the perpetrators must be adequately sanctioned.

22. Portugal

Opinion adopted on 4 December 2014

Article 4 of the Framework Convention

Legislative and institutional framework against discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the 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. It specifically asked that measures be taken to process the backlog of discrimination complaints which were pending before the office of the High Commissioner for Immigration and Intercultural Dialogue (ACIDI).

Present situation

The Portuguese legal and institutional framework for combating discrimination comprises several provisions. Racial discrimination is a crime, according to the Portuguese Criminal Code (Article 240). In 2010-2012, 21 crimes of racial discrimination were recorded. Apart from this, racial discrimination can also be subject to an administrative procedure, before the Commission for Equality and Against Racial Discrimination (CEARD). Discrimination in relation to work is prohibited by the Labour Code and complaints are analysed by the Authority for the Conditions of Work. In all cases of discrimination, complaints can also be submitted to the Portuguese Ombudsman.

According to the information available to the Advisory Committee, it appears that the administrative complaints mechanism for racial discrimination has largely remained unchanged and stands as described by the Advisory Committee in its second Opinion on Portugal. The complaints are submitted to the CEARD, chaired by the High Commissioner for Immigration and Intercultural Dialogue, and are forwarded for investigation to inspection bodies placed under the different ministries. The resulting report is sent to the CEARD, which issues an opinion, while the final decision is taken by the High Commissioner.

According to the authorities, in 2010-2012, 83 administrative complaints of racial discrimination were submitted. However, according to the information available to the Advisory Committee, financial sanctions were applied only in two cases. According to the information received, one of the persons sanctioned in the cases mentioned above – the owner of a bar having banned persons belonging to the Roma community from entering his establishment – allegedly declared that regardless of the fine, he will not give Roma access to his premises.

It has become apparent that, the procedure followed so far is ineffective, due to the complexity of the system and covers only racial discrimination. In those cases where racial discrimination is also a crime the jurisdiction is limited. The Advisory Committee considers that, in view of the poor

results so far, the law requires amendment in such a way as to give the right to any person to apply to a court by a simple, inexpensive and speedy procedure with a view to claiming compensation, annulment of an administrative act and/or an order to a public organ to make a decision in a case where human rights have been contravened generally. Such a procedure should be an alternative to the existing remedies available.

The Advisory Committee further notes that questions with respect to the independence of the bodies involved remain, as the investigations in individual cases are carried out by bodies subordinated to different ministries. Moreover, the CEARD and the High Commissioner do not have the right to investigate, initiate, or participate in court proceedings.

The Advisory Committee further notes that the low number of complaints lodged by victims of discrimination with the CEARD was explained by its interlocutors by a lack of awareness in the existing mechanisms, a lack of confidence in the justice system or in some cases, a lack of financial means.

In this context, the Advisory Committee welcomes information that the national anti-discrimination legislation is currently under revision. The Advisory Committee considers that this opportunity should be seized to remedy the existing shortcomings in legislation and practice and to make the necessary changes in order to improve the mechanism for responding to complaints of discrimination.

Recommendation

The Advisory Committee invites the authorities to proceed swiftly with amendments to the legislation that would bring it in line with the previous recommendations and the existing best practices in the field. In particular the authorities should seek to simplify and speed up proceedings. In the meantime, the Advisory Committee urges the authorities to continue raising awareness about the existing anti-discrimination legislation and available avenues of redress.

Measures to promote full and effective equality

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to develop further positive measures to promote full and effective equality for Roma, while ensuring that these measures were fully mainstreamed into social and other policies.

The Advisory Committee further called 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.

Present situation

In March 2013 the Portuguese authorities adopted the National Roma Communities Integration Strategy 2013-2020, in the framework of the EU national strategies for Roma integration. The Strategy targets four main areas: education, health, housing and employment. An Advisory Group for the Integration of Roma Communities (CONCIG), coordinated by the High Commissioner for

Immigration and Intercultural Dialogue, was set up in June 2014. In this context, the Advisory Committee welcomes the information that four representatives of the Roma communities have been co-opted/invited to take part in the work of CONCIIG. On the other hand, the Advisory Committee notes with regret that according to various interlocutors of the Advisory Committee, the consultation with the Roma representatives during the preparation of the Strategy was not adequately carried out. The Advisory Committee considers that lack of appropriate consultation with the representatives of the primary stakeholders and beneficiaries compromises the chance of successful implementation of the Strategy from the outset and demonstrates a paternalistic approach of the authorities towards Roma.

As the implementation of the National Roma Communities Integration Strategy is only in its initial phase, it is too soon for the Advisory Committee to evaluate its impact in practice. It notes however that according to available information the funding earmarked for the Strategy may not be adequate to the task. The Advisory Committee is concerned that, according to the information available, Roma still face discrimination in several areas of life, such as employment, housing and education (see further comments under the respective Articles below). The Advisory Committee also notes that, according to the evaluation of the European Commission, the Strategy should still include the following: more focus on desegregation and on responding to specific needs of the Roma in mainstream policies; more attention to the recent economic and social transformations and their consequences; further work on monitoring progress in implementation and in health outcomes; concrete measures to provide non-discriminatory access to housing; a calendar, targets, indicators, budget, in order to secure effective implementation.

As far as data collection is concerned, one of the priorities of the Strategy is to carry out a survey of the socio-economic situation of the Roma communities. The authorities expect to complete it by the end of 2014. The Advisory Committee welcomes this development, which it considers a necessary step towards better designing and implementing policies targeting the Roma.

The Advisory Committee notes with satisfaction that one of the Strategy's objectives is to promote gender equality within the Roma community, by promoting women's professional skills which are considered as essential conditions for women's empowerment, both within Roma communities and in society as a whole.

Recommendations

The Advisory Committee calls on the authorities to continue developing positive measures to promote full and effective equality for Roma, including gender equality, and to implement them effectively, in all areas of life. Such measures, including the National Roma Communities Integration Strategy, should be adequately financed and due consultation should take place with the stakeholders at all stages of preparation, implementation and evaluation.

The Advisory Committee encourages the authorities to extend the systematic collection of data and information on the situation of the Roma in all fields of daily life, in line with international standards in the field of personal data collection.

23. Romania

Opinion adopted on 21 March 2012

Article 4 of the Framework Convention

Prevention and protection against discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to take all necessary measures to ensure that the National Council for Combating Discrimination operated independently and effectively. It also noted that further information and awareness-raising measures relating to anti-discrimination legislation, targeting both the population at large and the public authorities needed to be taken.

The authorities were also called upon to ensure ongoing monitoring of the situation regarding discriminatory attitudes and practices vis-à-vis the Roma. At the same time, the Advisory Committee encouraged the authorities to step up information and awareness-raising activities in this field, targeting the Roma, the rest of the population and the public in general.

Present situation

The Advisory Committee notes with satisfaction the comprehensive legislation against discrimination, in particular with regard to national minorities that had already been adopted in Romania in 2000 and completed in the course of the last decade.

The Criminal Code which had been in force for most of the period covered by this Opinion, as well as the new Criminal Code (which entered into force in October 2011) qualify racial, ethnic, national, linguistic or religious hatred motivating a crime as an aggravating circumstance. Criminal legislation also penalises misconduct by civil servants regarding acts which restrict any person's rights based on, *inter alia*, race, nationality, ethnicity, language and religion. It has however been pointed out by some representatives of national minorities that in spite of this broad legislation, its implementation remains limited and in some cases the sanctions remain ineffective or inappropriate.

The Advisory Committee welcomes the fact that the National Council for Combating Discrimination (NCCD), established under the Government Order No. 137/2000, has been empowered to combat discrimination by carrying out investigations of complaints lodged by individuals and legal persons, as well as those started on its own initiative, and is making recommendations and imposing fines. The Advisory Committee notes however that the Council cannot provide an effective remedy nor award compensation to victims of discrimination.

In 2010, the NCCD received 478 complaints of discrimination, of which it resolved 117 by the year's end. Ninety-seven complaints lodged in 2010 alleged discrimination on the basis of nationality, ethnicity, and race, and six involved discrimination on religious grounds. The NCCD received 54 complaints regarding discrimination against Roma.

The Advisory Committee welcomes the fact that the NCCD acts independently and decisively, as exemplified by its investigation in 2011, when it sanctioned the local authorities responsible and ordered the demolition of the wall built to separate some buildings occupied mostly by Roma in

Horea Street in Baia Mare municipality. In a different case, the NCCD did not hesitate to caution senior state officials for making discriminatory remarks about Roma, amongst others.

The Advisory Committee notes however with concern that some representatives of civil society have stressed that the effects of the activities of the National Council for Combating Discrimination remain limited, due to underfunding, as well as a lack of systematic follow-up by the authorities to NCCD's findings, for example as concerns repeated findings of discrimination in cases involving forced evictions of Roma.

Recommendations

The Advisory Committee calls on the authorities to ensure the implementation of the recommendations and decisions of the National Council for Combating Discrimination and monitor effectively their long-term impact.

The Advisory Committee urges the authorities to provide the National Council for Combating Discrimination with the appropriate financial and human resources, in order to allow it to fulfil its duties effectively and independently.

Office of the Ombudsman

Present situation

The Advisory Committee notes the role of the Advocate of the People (Ombudsman) as a main autonomous institution in Romania, whose objective is to defend citizens' rights and freedoms. In the past years, and within the context of financial constraints, the budget of the Office of the Advocate of the People has been reduced and therefore the activities of this institution have been affected.

In 2009, the Office of the Advocate of the People received 8,295 petitions, conducted 30 investigations, and formulated only six recommendations. The Ombudsman's involvement in defending the rights of persons belonging to national minorities is limited. The Advisory Committee notes in this context that complaints alleging discrimination have been redirected by the Ombudsman to the National Council for Combating Discrimination. Even though steps have been taken recently by the Ombudsman to strengthen its relations with national minorities, some representatives of these minorities have expressed their concerns to the Advisory Committee about the weakness of the Ombudsman as an institution and its inefficiency in the field of anti-discrimination, especially with regard to national minorities and Roma.

The Advisory Committee is of the opinion that both the National Council for Combating Discrimination and the Advocate of the People (Ombudsman) have important and separate roles to play in promoting the respect of human rights of persons belonging to minorities. While the NCCD's principal task is to investigate complaints and sanction violations in cases of discrimination, the Ombudsman has an over-all human rights mandate.

Recommendation

The Advisory Committee encourages the authorities to take measures without delay to clarify the role of the Office of the Advocate of the People in order to ensure an effective redress mechanism for persons belonging to minorities.

Application of the principles of equality and

non-discrimination with regard to the Roma

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to take more decisive measures and steps to address the social and economic inequalities affecting the Roma population.

The Advisory Committee also urged the authorities to overcome, in consultation with the Roma, the shortcomings noted in the 2001 Governmental Strategy for the Roma, in order to effectively implement them and to increase the resources allocated in this context.

Present situation

The Advisory Committee notes that in February 2005 the Romanian authorities, together with eight other governments in Central and Eastern Europe, signed the Declaration of the Decade of the Roma Inclusion thus committing itself to improve the socio-economic status and social inclusion of Roma. Moreover, the Advisory Committee welcomes the drafting of the new National Strategy for Roma 2011-2020, developed by the National Agency for Roma in consultation with different ministries in Romania and representatives of civil society.

The Advisory Committee notes the implementation of the Strategy for Roma 2011-2020 should be carried out by each of the ministries involved, and the National Agency for Roma will coordinate and monitor the Action Plan. The objectives of the new strategy, which are included in the objectives of the Decade for Roma Inclusion, focus on increasing the level of education and qualification of the Roma, in order to increase the employment rate amongst Roma, to decrease poverty levels, to prevent social exclusion and discrimination of Roma in society, and also to improve their health and housing conditions.

However, it has been stressed by several Roma representatives and some authorities that the funds for the implementation of the strategy have neither been clearly defined nor allocated. This shortcoming constitutes the main problem as regard its possible implementation. The Advisory Committee notes that due to a shortfall of resources allocated to the previous Strategy for Roma, the results achieved were limited, and the shortcomings have not been overcome.

Although the funding is primarily provided by the central government, the decisions about the expenditures have to be taken by local authorities, in accordance with the legislation on decentralisation of public administration. In this context, cases of inefficiency and insufficient coordination have been pointed out to the Advisory Committee in fields such as housing, education, and social inclusion. The Advisory Committee notes with concern the practices of some public authorities claiming lack of funds as regards planning and implementing projects designated to meet the objectives of social inclusion for Roma.

The Advisory Committee further notes with concern that, while representatives of the Roma generally acknowledge the significant efforts of the authorities to improve access to health care for Roma, including by training and employing health mediators, they also pointed out a number of factors which all have a negative impact on the access of Roma to basic health care. In particular these factors include lingering prejudices among health staff and limited resources in the health sector and in particular cases of unwillingness on the part of local authorities to allocate available resources to employ trained Roma health mediators.

The Advisory Committee is concerned by the persistent lack of identification documents among some sectors of the Roma community. Due to the lack of documents, a number of Roma do not have effective and equal access to health care and the labour market. Additionally, the lack of such documents impedes the persons concerned from owning houses and other real estate. This situation also represents a major obstacle to the promotion of Roma social inclusion through the National Strategy.

The Advisory Committee is also deeply concerned by persisting reports of denial of access to public places for Roma. It is particularly worrying that such incidents continue to be reported, in spite of the fact that the authorities have been aware of the problem for many years. The Advisory Committee recalls that in a similar case of a refusal of admission and service in a bar based on ethnic origin, the NCCD established already in 2003 that such acts constituted discrimination on the grounds of race and ethnic origin with respect to access to public places and public services, and infringed the right to human dignity of the persons involved.

The Advisory Committee also regrets that according to Roma representatives, and also some authorities, persons belonging to the Roma communities are facing negative attitudes when dealing with the local authorities in different fields, and no significant improvements have been registered in this respect from the previous cycles of monitoring. In addition, Roma have been portrayed by some media and political representatives, as those responsible for the lack of progress as regards Romania's admission to the Schengen zone, thus reinforcing their stigmatisation.

The Advisory Committee notes the activity of the National Institute of Magistrates to implement and improve access to justice for persons of Roma origin, and welcomes in this regard the programme carried out in collaboration with non-governmental organisations entitled "A fair access to justice for the Roma community". The Advisory Committee also welcomes the Law No. 51/2008 on public legal aid, which provides legal assistance to persons with economic difficulties, therefore ensuring effective access to justice. It also notes with satisfaction the co-operation between the Department for Interethnic Relations and the National Agency for Roma, aimed at developing campaigns to suppress negative stereotypes and prejudices in society, for example the campaign, "Know the Roma before you judge them", which has been broadcast by the national public television company.

Recommendation

The Advisory Committee urges the authorities to investigate thoroughly and effectively any complaint of discrimination against Roma in the provision of goods and services, including access to health care. The training and use of health mediators should be extended.

The authorities must step up their efforts, in particular at local level, to improve the education and employment opportunities and living conditions of Roma, and to promote their full integration into society.

The Advisory Committee calls on the authorities, as a matter of priority, to ensure that adequate resources are made available for the implementation of the National Strategy for Roma 2011-2020 and to coordinate the implementation of the strategy at the local level.

The authorities should take more resolute measures to solve outstanding cases of lack of personal identity documents among the Roma population.

Housing and evictions

Present situation

The Advisory Committee notes with concern that persons belonging to the Roma community still face discrimination, and negative stereotypes and prejudices on the part of some sectors of the Romanian society. It is concerned, in particular, that despite the fact that, according to The Housing Act (Law 114 of 1996) supplemented by Emergency Ordinance N° 40/1999, it is mandatory to consult persons affected by evictions as regards alternative dwellings, such consultations are rarely held in practice. In addition, representatives of the Roma communities and of civil society approached the Advisory Committee to express their concern about the growing trend in recent years to establish Roma housing units in the outskirts of towns and villages, sometimes in places that do not meet adequate living standards. One such case concerns the eviction in Cluj-Napoca where 76 families (totalling 356 persons) were moved from their homes, close to the centre of the city to an industrial area in the outskirts of the city next to a rubbish dump in Pata Rat.

The Advisory Committee is concerned about the practice of evictions of Roma families and especially about the resettlement of the Roma in places lacking the necessary standards both as regards the quality of the housing itself, but also other services, such as transportation facilities, access to schools, health centres and employment opportunities. It is of particular concern that the establishment of new housing units for Roma, outside the main residential areas, increases the isolation of the Roma and contributes to stigmatisation of this community.

The Advisory Committee deplores the fact that cases of discriminatory practice carried out by the local authorities against the Roma, continue to be reported. In the course of its visit to Romania, the Advisory Committee visited the town of Baia Mare, where a high brick wall had been built at the initiative and expense of the municipal authorities around a compound of three apartment blocks inhabited by the Roma. Whereas the local authorities argued that the purpose of the wall was to prevent traffic accidents caused by unsupervised children playing in the road, it has also been noted that the apartment blocks which were in a state of total dilapidation, lacking windows, balcony railings, proper safeguards from electric hazards, and adequate sanitary facilities, presented far greater danger to the health and lives of all living there. The Advisory Committee notes in this context with satisfaction that the National Council for Combating Discrimination, having examined a complaint lodged by the inhabitants, and non-governmental organisations, imposed a fine of 6,000 lei (approx. 1,400 €) on the mayor of the city and recommended that the wall be pulled down and that measures be taken to improve the living conditions of Roma inhabitants of the settlement.

Recommendations

The Advisory Committee urges the authorities to ensure that, when Roma inhabitants are relocated from dwellings unsuitable for habitation, the persons concerned participate effectively at all stages of the process and that adequate alternative accommodation is provided without delay. Particular attention must be paid to families with children in order to ensure that such relocations do not restrict the right of access of children to education. The authorities must pay particular attention, in consultation with the Roma families concerned, to the location of new housing units.

The Advisory Committee calls upon the authorities to improve without delay the housing conditions of Roma. The authorities should ensure that the persons concerned have the possibility to participate effectively in the consultations and decision-making processes regarding such improvements.

24. Russian Federation

Opinion adopted on 24 November 2011

Article 4 of the Framework Convention

Legal and institutional framework for combating discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee strongly encouraged the authorities to develop comprehensive anti-discrimination legislation containing a clear definition of direct and indirect forms of discrimination, and providing effective remedies against discrimination both by public authorities and private entities. It further urged the authorities to consider the creation of an independent body specialised in combating discrimination, which should also be responsible for the collection of reliable data on the specific situation of persons belonging to national minorities in employment and other societal settings.

Present situation

The Advisory Committee notes with regret that no comprehensive anti-discrimination legislation has been adopted and no such plans exist for the future. While acknowledging that some positive steps have been made in this regard with the inclusion of equality guarantees in a number of federal and regional legislative acts, the Advisory Committee notes with concern that the overall understanding of issues related to discrimination in all spheres of life but particularly related to access to social and economic rights, appears to be still limited in society, including among public officials. The Constitution of the Russian Federation is often referred to as sufficient in terms of protection against discrimination, as its main provisions establish social and economic rights for all, citizens and non-citizens alike. However, specific legislation at the level of the subjects of the Federation regarding, for instance, housing rights or social security, are often directed at citizens only and even there, the implementation of the provisions depends frequently on the registration of the applicant as resident.

The Advisory Committee therefore finds that there is an urgent need to adopt comprehensive and directly applicable anti-discrimination legislation in order to ensure that federal and regional state authorities and the public at large obtain a better understanding of the many forms of discrimination that are persistent throughout the territory of the Russian Federation today. Such legislation must contain a comprehensive definition of racial discrimination, that includes direct and indirect forms of discrimination, including multiple forms of discrimination, and should cover all fields of law and public life. The law should equally provide for a shared burden of proof in civil and administrative court proceedings concerning acts of discrimination.

The Advisory Committee further regrets that no independent body specialised in combating discrimination throughout the territory of the Russian Federation has been created, as was

recommended by the European Commission against Racism and Intolerance (ECRI) in its second and third report, as well as in the Advisory Committee's Second Opinion. While noting the argument of the Russian authorities that the functions of such a body are fulfilled by the Office of the Commissioner on Human Rights and the Federal Human Rights Commission, the Advisory Committee observes that the Commissioner is accountable to the executive and that his competency is limited to an advisory function. In addition, his Office of 20 staff deals with the human rights situation in the Russian Federation in general which, according to its website, 'remains extremely tense'. The Advisory Committee finds that a specialised body at federal level is still needed to monitor the implementation of existing anti-discrimination measures in the country and, importantly, engage in targeted awareness-raising activities for the public at large, including groups that are particularly exposed to incidents of discrimination such as persons belonging to national minorities, internally displaced persons, and other disadvantaged groups.

The Advisory Committee notes with interest that an increasing number of cases are brought before the courts against alleged instances of discrimination. It welcomes the fact that a revision of the Criminal Code in 2007 enlarged the list of offences for which the motivation of ethnic, racial or religious hatred is to be considered an aggravating circumstance, including homicide, bodily harm, hooliganism and vandalism. At the same time, it notes with concern that the number of cases taken to court are still very low when compared to the documented reports from intergovernmental and non-governmental organisations that point at persistent discriminatory behaviour in public services as well as within private entities in all spheres of life, particularly as regards the judiciary, employment and housing. Against this background, the absence of formal complaints by victims of discrimination can be interpreted as an indication of their lack of awareness of the legal remedies available to them, or their lack of trust in the will of the authorities to implement these remedies.

Recommendations

The Advisory Committee reiterates its call on the Russian authorities to adopt comprehensive anti-discrimination legislation that covers all fields of law and public life and provides effective protection from discrimination in all its forms.

The Advisory Committee reiterates its call on the authorities to establish a specialised and independent body to combat racism and racial discrimination in all its forms by, among others, monitoring the implementation of the anti-discrimination legislation. In addition, such a body could engage in organising awareness-raising and training activities among relevant public services as well as society at large, particularly those groups most exposed to discrimination.

Collection of data on ethnic origin

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to collect reliable data concerning the situation of persons belonging to national minorities in employment and other societal settings, without which it would be difficult to assess the effectiveness of existing anti-discrimination provisions.

Present situation

The Advisory Committee is aware of repeated statements by the Russian authorities that they refrain from gathering comparative statistical data on the enjoyment of rights by ethnic minorities in order to prevent any discrimination on the basis of ethnicity or nationality. The Advisory Committee would like to reiterate its view that, on the contrary, a comprehensive and consistent data collection system is indispensable to ensure that the implementation of relevant anti-discrimination and measures to promote equality effectively be monitored and evaluated, and achievements or the lack thereof adequately measured. In this regard, the Advisory Committee welcomes the objective contained in the 2009 Concept Paper on the Sustainable Development of Numerically Small Indigenous Peoples of the North, Siberia and Far East (hereinafter 'Concept Paper') of developing a system within the competence of federal authorities for the collection of statistics to monitor and analyse the conditions and living standards of numerically small indigenous peoples (hereinafter referred to as indigenous peoples). Such data collection could contribute to devising more effective strategies and concrete measures to promote equal opportunities for persons belonging to these groups.

Any data related to the living conditions and access to rights of persons belonging to national minorities should be collected, including through independent research, with full respect for the national legislation as well as international standards in the field of personal data protection. The Advisory Committee finds that the responsibility for the collection of such data should lie with an independent and specialised body tasked solely with the aim to promote equality and combat all forms of discrimination in society.

Recommendation

The Advisory Committee reiterates its recommendation to the Russian authorities to create a comprehensive data collection system on the situation of persons belonging to national minorities in various areas such as education, employment, and housing, in order to assess the extent to which they are exposed to discrimination in daily life and to identify the best policies of countering such discriminatory practices. In this context, it invites the authorities to pay attention to independent research related to these issues.

Discrimination in the residency registration system

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to step up their efforts to make the system of residency registration compatible with applicable human rights standards and increase, in particular, their efforts to grant citizenship to stateless persons residing in the Russian Federation.

Present situation

The Advisory Committee welcomes the fact that the 2006 Federal Law on Migration and Registration of Foreign Nationals and Stateless Persons in the Russian Federation and the amendments to the Federal Law on the Legal Status of Foreign Citizens simplified the procedure for obtaining temporary residence and work permits, especially for newly-arrived non-citizens (see comments on Article 6 below). It notes with concern, however, that the implementation of the residency registration system as such, applicable to all citizens, remains reportedly problematic and discriminatory. Despite the fact that registration, according to Article 27 of the Constitution as

well as constant Constitutional Court jurisprudence, has only notification character and does not constitute a permission to stay, a series of 'administrative barriers' are reportedly put in place by the police in some areas to delay or sometimes even prevent the registration of individuals belonging to some minorities, including Chechens and other persons originating from the Caucasus, as well as Roma. The Advisory Committee is deeply concerned about numerous reports it received about the police arbitrarily imposing fines on or demanding bribes from unregistered persons belonging to certain minorities (see further comments on Article 6 below).

The Advisory Committee is further concerned by continued reports from non-governmental and intergovernmental sources that, in practice, the enjoyment of many rights and benefits, such as access to housing, social services, and health care as well as, in some instances, education, depends on registration. It welcomes, however, that access of children of unregistered persons to education seems, according to information received by the Advisory Committee, to have improved in recent years, except in the case of Roma (see further comments Article 12 below).

The Advisory Committee is pleased to note the concerted efforts made by the Russian authorities between 2003 and 2009, resulting in nearly 600,000 stateless persons acquiring Russian citizenship, due to a fast-track system open to foreign citizens and stateless persons who were previously citizens of the Soviet Union and were legally registered in Russia before 2 July 2002. According to UNHCR estimates, however, around 50,000 stateless persons are still residing in the Russian Federation, among those 17,000 who are legally registered by the Federal Migration Service. The Advisory Committee notes with concern that undocumented stateless persons still face significant difficulties in legalising their stay and, eventually, acquiring citizenship.

Problems are particularly acute for persons belonging to some ethnic minorities in many regions, including a number of Batumi Kurds, Hemshils, Yezidis and those Meshketian Turks and other groups who were deported from Georgia in the 1940s, who remained in Krasnodar *Krai*, as they often face discriminatory attitudes and reluctance from police officers to provide them with the necessary registration and temporary residence permits to legalise their stay. The situation is reportedly made worse by the inability of undocumented stateless persons to seek redress from the courts. The Advisory Committee is also concerned about pockets of statelessness that remain in the North Caucasus, including in North Ossetia-Alania as well as the Far East of the Russian Federation, and about reports of non-ethnic Russians with former Soviet passports being instructed to 'return' to Georgia and then come back as migrants. It welcomes in this regard recently-reported efforts by some authorities, including within Krasnodar *Krai*, to issue migration cards to former Soviet citizens without any documents, to assist them to legalise their stay. In this regard, the Advisory Committee also welcomes efforts to adopt amendments to the relevant federal legislation that intend to facilitate the regularisation of stateless persons, and, upon adoption, could assist in effectively addressing the still high number of unresolved cases of statelessness in the Russian Federation.

Recommendations

The Advisory Committee reiterates its urgent call on the Russian authorities to ensure that the residency registration system is implemented without bias. Discriminatory or arbitrary behaviour by the police forces must be prosecuted and sanctioned appropriately and swiftly. Regional and

local registration regimes must comply with federal legislation, and registration must not be made a precondition for accessing basic rights.

The Advisory Committee reiterates its recommendation that procedures for processing registration and citizenship applications must be transparent and guarantees for legal representation put in place, in order to ensure the right to appeal against decisions deemed discriminatory by the applicant, including for persons without documents or established citizenship.

Full and effective equality for persons belonging to national minorities

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to pay increased attention to the severe social and economic difficulties faced by certain minority groups and develop targeted assistance programmes in close consultation with those concerned.

Present situation

The Advisory Committee regrets that no significant developments have been made in the promotion of equality of persons belonging to particularly disadvantaged groups, in particular the Roma as well as, in some areas, persons belonging to indigenous peoples. In the absence of a comprehensive study, a number of national and international reports portray the overall socio-economic situation of persons belonging to these groups as still significantly worse than that of the general population, with particular gaps in equality reported in the areas of housing, education, and access to the labour market (see further comments on Article 15 below). As regards indigenous peoples, the Advisory Committee is alarmed by reports that the salaries and working conditions for the overwhelming majority of indigenous peoples engaged in traditional activities, such as fishing, fail to meet basic legal requirements, that wages are extremely low and often paid in the form of food or alcohol.

The Advisory Committee is further particularly concerned about the continuing separation and isolation of Roma children in many schools where barriers to their access to quality education openly demonstrate discriminatory attitudes by teachers, principals and education authorities alike (see further comments on Article 12 below). The situation is made worse by the apparent lack of acknowledgement of the problem on the side of some authorities. A comprehensive approach to end these practices and promote full and effective equality in education for Roma children is urgently required.

In addition, the Advisory Committee is deeply concerned about the continued reports concerning forced evictions of Roma, which are frequently carried out with violence. According to some reports, Roma are often not offered alternative housing or adequate compensation and are forced to find, themselves, alternative places to settle. Even if evictions are accomplished in accordance with a court ruling, the right to a fair trial is frequently violated, as many Roma lack registration and their claims are therefore not duly considered. The Advisory Committee is worried about the situation in the Roma settlement in Shagol, Chelyabinsk *Oblast*, whose inhabitants have been threatened with eviction for over one year without any concrete steps from the side of the administration to offer alternative accommodation. Against this background, it is encouraging to

learn about the positive example in Tyumen *Oblast*, where an investment company that had purchased land in Tyumen City on which a Roma community had settled, has provided, in consultation with the administration, civil society, and Roma representatives themselves, alternative accommodation for approximately 60 families. However, they have reportedly not been able to actually move into their new homes because of resistance from the neighbourhood, a problem which is not being addressed appropriately by the local administration.

In addition, the Advisory Committee is deeply concerned about continued reports on inequalities in the justice and prison system. National minorities such as Chechens and other persons originating from the Caucasus, as well as Roma, continue to be subjected to selective and disproportionately frequent identity checks by the police and other law enforcement agencies, accompanied by extortion of bribes, unlawful and unprovoked use of violence and harassment, as well as unwarranted arrests and detentions (see further comments on Article 6 below). In this regard, the Advisory Committee is further concerned about the fact that there are reportedly no efforts to allow persons belonging to national minorities in the penitentiary system to respect their culture and religion. On the contrary, the Advisory Committee received credible reports of continued harassment and discriminatory treatment of persons belonging to national minorities, in particular those belonging to the Muslim faith, in prisons by fellow inmates and prison personnel. While there is increased awareness about the acute human rights problems in Russian prisons, insufficient attention is still paid to the particular vulnerabilities of persons belonging to certain national minorities in this regard.

Finally, the Advisory Committee is alarmed by the increasing number of reports regarding inequalities with regard to access to rights for persons belonging to national minorities in many spheres of life. Access to the labour market for persons with non-Slavic names, for instance, is reportedly deteriorating as general intolerance and hostility against 'non-Russians' or 'non-Slavs' is exhibited with increasing openness (see comments on Article 6 below). The Advisory Committee is worried about reports that it is still common to advertise rented accommodation with the addition 'only for Russians', for instance in Tyumen *Oblast*. While welcoming the efforts made by some regional authorities to prevent such discriminatory advertisements, the Advisory Committee finds that these reports point to an urgent lack of awareness on fundamental human rights and equality principles among society at large, which must be tackled with comprehensive awareness-raising among officials and broader society at federal, regional and local level. In addition, persons originating from the Caucasus and in particular Chechens often face difficulties in finding an official residence for registration purposes, as many landlords fear repercussions from officials who, reportedly, actively seek to encourage Chechens to return to Chechnya.

Recommendations

The Advisory Committee urges the Russian authorities to pay the utmost attention to the persistent inequality experienced by persons belonging to national minorities, in particular persons originating from the Caucasus, as well as Roma. Comprehensive awareness-raising and training activities must be conducted among relevant public services, in particular law enforcement and the judiciary, as well as society in general to ensure better understanding of applicable international and national human rights guarantees.

The Advisory Committee further urges the Russian authorities to put an end to the persistent practices of forced evictions of Roma settlements without offering alternative accommodation or adequate compensation and encourages them strongly to devise and implement, in consultation with Roma representatives, a comprehensive strategy for the promotion of effective equality for Roma, including their access to housing and education.

25. Serbia

Opinion adopted on 28 November 2013

Article 4 of the Framework Convention

Legislative framework for prohibiting discrimination

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee invited the authorities to adopt non-discrimination legislation without delay and to take due account of ECRI's General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination in implementing it.

Present situation

The Advisory Committee welcomes the enactment and entry into force in 2009 of the Law on the Prohibition of Discrimination, and notes with interest that ECRI has since found this Law to be largely in keeping with its General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination. The Advisory Committee notes that the Law prohibits discrimination on a wide variety of grounds including skin colour, citizenship, national affiliation or ethnic origin, language and religious beliefs. It also provides specifically that "[i]t is forbidden to discriminate against national minorities and their members on the grounds of religious affiliation, ethnic origin, religious beliefs and language. The manner of realising and protecting the rights of members of national minorities shall be regulated by a special law." The Advisory Committee regrets, however, that, in contrast with the provisions on the prohibition of discrimination in the field of labour, education and the provision of public services, this Law does not include detailed provisions with respect to discrimination in the areas of housing and social protection. The Advisory Committee observes in this regard that persons belonging to national minorities, who in many cases live in isolated areas that are at a relative socio-economic disadvantage, may be particularly affected by discrimination in these fields (see further below, Situation of the Roma). It is concerned that the lack of clarity of the Law in this regard may both deter individuals from bringing claims of discrimination in the fields of housing and social protection and, if any such claims are brought, result in their dismissal.

Article 22, paragraph 2 of the Constitution still grants citizens the right of addressing international institutions for the protection of their rights and freedoms, without expressly granting this right to all persons within the jurisdiction of Serbia. As pointed out in the Advisory Committee's previous Opinion, given that problems remain as regards access to citizenship for some persons belonging to national minorities (see also Article 3 above and further below), this provision continues to exclude non-citizens belonging to a minority group from accessing international human rights

institutions. There has also been no change to the Criminal Code to eliminate references to “citizens” in areas of relevance for the protection of national minorities.

Recommendations

The Advisory Committee recommends that the authorities take all necessary steps to ensure that the wording of the Law on the Prohibition of Discrimination does not prevent persons from national minorities from bringing claims of discrimination in the fields of housing and social protection, and amend the Law if necessary to achieve this.

The Advisory Committee invites the authorities to ensure that all undue citizenship requirements are removed from constitutional and criminal law provisions relevant to the protection of national minorities.

Positive measures

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to ensure that the legal provisions relating to the introduction of positive measures were fully in line with the principles contained in Article 4, paragraph 2 of the Framework Convention.

Present situation

The Advisory Committee notes that in accordance with Article 21, paragraph 4 of the 2006 Constitution, “Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.” It also notes with satisfaction Article 14 (Special Measures) of the 2009 Law on the Prohibition of Discrimination, which – in line with this provision of the Constitution – provides as follows: “Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination.”

The Advisory Committee again regrets the apparent contradiction of Article 76, paragraph 3 of the Constitution with the above-mentioned provisions, in so far as it appears to lay down more stringent conditions for applying special measures to national minorities than to other groups. It observes that, as long as the courts systematically apply the overarching definitions of special measures contained in Article 21, paragraph 4 of the Constitution and Article 14 of the Law on the Prohibition of Discrimination to all cases where special measures are at issue, including special measures aimed at promoting the equality of persons belonging to national minorities, there will be no particular difficulty in adopting and implementing positive measures with respect to persons belonging to national minorities where necessary to achieve full and effective equality. In practice, the situation would thus be compatible with Article 4, paragraphs 2 and 3 of the Framework Convention. However, it finds that it would be preferable not to place the burden on the courts to resolve such crucial issues; instead, any possible ambiguity should be removed from the relevant text by aligning the wording of Article 76, paragraph 3 of the Constitution with the wording of Article 21, paragraph 4, which is more clearly in keeping with the spirit of the Framework Convention.

Recommendation

The Advisory Committee recommends that the wording of Article 76, paragraph 3 of the Constitution as regards positive measures with respect to persons belonging to national minorities be aligned both with the spirit of Article 4, paragraphs 2 and 3 of the Framework Convention and with the recognition of special measures in Article 21 of the Constitution.

Monitoring discrimination and available remedies

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities take the necessary measures to ensure that ombudsmen institutions at all levels were able to perform their tasks efficiently and that they were known and accessible, in particular to persons belonging to national minorities, including in their language. It also called on the authorities to raise awareness amongst the population of their rights and to strengthen confidence amongst persons belonging to national minorities in the possibility of addressing cases of alleged discrimination to the courts.

Present situation

Within the scope of his or her powers to review the operation of public administrative bodies at state level, the Ombudsman (Protector of Citizens) continues to deal with complaints of discrimination committed by such bodies in the exercise of their powers and to issue (non-binding) recommendations, views and opinions in such cases. The Advisory Committee notes with interest that the complaints form is available in all the minority languages used officially in Serbia and that the Ombudsman has carried out outreach work, visiting most local self-government units with a mixed population in the last few years. The number of cases relating to minority rights dealt with by the Ombudsman has risen exponentially over the past years, from 22 complaints handled in 2008 to 221 in 2011 and 364 in 2012.

The Ombudsman of Vojvodina as well as a number of Ombudsmen at local level also continue to handle cases where individuals complain of violations of their rights by the authorities at the relevant level. The Advisory Committee notes that, since the enactment of the 2009 Law on National Councils of National Minorities, the Provincial Ombudsman has also found that it is competent to examine the actions of National Councils of National Minorities, where these actions are carried out in the exercise of public powers (see further below, comments under Article 15).

Following the enactment of the 2009 Law on the Prohibition of Discrimination, the Commissioner for the Protection of Equality was appointed in 2010. In accordance with the Law, the Commissioner is an independent state organ competent to receive and review complaints of violations of the Law on the Prohibition of Discrimination committed by public authorities or private parties (individuals or legal entities), provide information to complainants on legal avenues of redress, bring legal proceedings on behalf of a complainant and issue misdemeanour notices in cases where he or she finds a violation of the Law. He or she is required to establish and maintain co-operation with equality and human rights bodies established at the level of an autonomous province or local government, and to recommend to public administration organs measures aimed at ensuring equality.

The Advisory Committee observes that, since her appointment in May 2010, the Commissioner for the Protection of Equality has dealt with a growing number of complaints of discrimination, including on the grounds of national affiliation or ethnic origin. Such complaints accounted for 19 out of 124 complaints received in 2010, 72 out of 349 complaints received in 2011 and 68 out of 465 complaints received in 2012. The Advisory Committee observes nonetheless that citizens remain largely unaware of the legal avenues of redress existing under the Law on the Prohibition of Discrimination; conversely, it has consistently been the case since the Commissioner began working that in the majority of cases lodged on the grounds of national affiliation, no discrimination is found to have occurred, which suggests both that persons belonging to national minorities have the perception that they are less well treated than persons of other ethnic origins and that the notion of discrimination is not yet widely understood in Serbia. The Advisory Committee also notes with concern that the lack of adequate office space reportedly continues to prevent the Commissioner's office from recruiting new staff. Three years after its creation, the office is thus still operating with only one-third of the staff attributed to it according to the relevant decisions of the National Assembly. Despite the active efforts of the Commissioner and her office, this situation severely hampers the effective processing of complaints and the capacity of the institution to carry out the full scope of its statutory tasks.

The Advisory Committee notes that the existence and functions of the Commissioner for the Protection of Equality are not yet well known amongst the general public and that additional awareness-raising efforts may be needed to increase the accessibility of this body. The Advisory Committee is also concerned that the Ombudsman, Provincial Ombudsman and Commissioner for the Protection of Equality have all indicated that a number of their recommendations have not been implemented. It emphasises that rapid follow-up to the findings and recommendations of these bodies in the relevant cases is crucial to the achievement of full and effective equality for persons belonging to national minorities.

Finally, the Advisory Committee notes that the lack of comprehensive data concerning the overall prevalence of discrimination on the relevant grounds means that it is more difficult both to build up a clear general overview of the situation in practice and to design targeted policies for overcoming discrimination against persons belonging to national minorities.

Recommendations

The Advisory Committee urges the authorities at all levels to give rapid and complete follow-up to the findings and recommendations of the Ombudsman, Provincial Ombudsman and Commissioner for the Protection of Equality in all cases affecting the rights of persons belonging to national minorities.

It urges the authorities rapidly to provide adequate premises to the Commissioner for the Protection of Equality, in order to enable this institution to recruit its full complement of staff and to ensure the efficient handling of complaints received. It again emphasises that the Ombudsman institutions at all levels, as well as the Commissioner for the Protection of Equality, must receive adequate support in order to ensure that they are in a position to perform their tasks efficiently and that they are known to persons belonging to national minorities and accessible to them, including in their languages.

The Advisory Committee recommends that the authorities adopt measures aimed at collecting reliable data on discrimination in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the right to free self-identification and in accordance with international standards on personal data protection.

The situation of the Roma

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to ensure the sustainability of the national strategy for Roma, allocate adequate human and financial resources to and secure the full involvement of local authorities in its implementation, and carry out regular evaluations of progress achieved, in consultation with Roma representatives. It recommended that the authorities pursue and intensify their efforts to improve the housing and health situation of Roma.

Present situation

The Advisory Committee acknowledges the efforts made by the Serbian authorities to improve the situation of Roma. In this regard it takes note of the adoption in 2009 of the Strategy for the Improvement of the Status of Roma and of the accompanying Action Plan for the Implementation of the Strategy for the period 2009-2011. The latter included revised action plans in the four priority fields identified in 2005, namely employment, housing, education and health, as well as additional measures concerning the social welfare of internally displaced persons, returnees under the readmission agreement, promotion of the position of women, media, culture and information in the mother tongue as well as discrimination and political participation. The Advisory Committee regrets, however, that the draft action plan for the implementation of the Strategy for the period 2012-2014, drawn up in 2011 by the then Ministry of Human and Minority Rights, Public Administration and Local Self-Government, was not approved by the government prior to the 2012 elections. The Advisory Committee emphasises the importance of defining timely, clear, coherent and targeted action plans, including measurable outcomes and supported by adequate human and financial resources, in order to ensure that the Strategy for the Improvement of the Status of Roma leads to improvements in practice. It notes that work on the 2012-2014 Action Plan was expected to be completed by the Office for Human and Minority Rights set up in 2012 under the new government, in consultation with other relevant authorities, the National Council of the Roma National Minority, Roma NGOs and international organisations, and that the Action Plan was approved by the government on 10 June 2013.

The Advisory Committee welcomes the enactment in November 2011 of the Law on Permanent and Temporary Residence of Citizens, allowing citizens who could not register their residence on the basis of a property right (ownership, lease or other legal basis) to register their permanent residence using the address of their local social welfare centre. This was a useful step towards resolving problems faced by persons lacking identity documents, the majority of whom are Roma living in informal settlements, and who are deprived of access to other basic rights that cannot be exercised without the requisite identity documents. However, the Advisory Committee notes with regret that the regulation necessary to implement these new provisions was not adopted until a year later, on 30 November 2012. It is moreover concerned at reports that even now, despite the innovations contained in the above-mentioned Law, there are obstacles to its operation in practice, meaning that persons who cannot demonstrate that they have a place of permanent

residence are still unable to obtain identity documents and are thus prevented from exercising other social rights.

As regards persons whose birth has not been officially registered (“legally invisible” persons), the Advisory Committee notes with interest the signing of a memorandum of understanding between key national and international actors involved in supporting the Roma in the process of late registration of births. It also welcomes the enactment in August 2012 of the Law on Additions to the Law on Extra-Judicial Proceedings, which establishes a simplified, non-contentious procedure for registering births outside the normal time-limits. However, it is regrettable that this Law expressly provides that the body competent to handle acquisition of citizenship procedures (the Ministry of the Interior) is not bound by the court decision determining the time and date of an individual’s birth in accordance with this Law. This essentially negates the positive effects of the Law as regards overcoming statelessness, since it means that a judicial decision filling in key gaps in an individual’s civil status, which is needed to acquire citizenship and is achieved through the application of this Law, can simply be ignored by the sole body able to grant citizenship. The Advisory Committee is also concerned at reports that restrictive interpretations applied by the Ministry of the Interior regarding the acquisition of citizenship by adults whose birth was not registered in a timely manner may leave these persons in a situation of statelessness even if they have subsequently been able to register their birth through the above-mentioned procedures. It is furthermore concerned that, because a birth can only be registered if the child’s parents possess the necessary identity documents, the children of “legally invisible” persons are condemned to the same situation themselves.

In the field of housing, the Advisory Committee welcomes the enactment of the Law on Social Housing in 2009, and the priority given to socially vulnerable groups, including Roma, when determining the order of allocation of social housing in accordance with this Law, but considers it highly regrettable that Roma without identity papers are unable to benefit from this system. It also notes with interest the adoption in 2012 of the National Strategy for Social Housing and the Action Plan for the implementation of this strategy, including a special measure for the improvement of housing conditions for the residents of substandard settlements (most of which are Roma informal settlements). It notes that the Ministry of the Environment, Mining and Spatial Planning has financed the development of plans for the improvement of living conditions in several informal Roma settlements, with the aim of achieving satisfactory living standards and ultimately the legalisation of these settlements, and that in Vojvodina, substantial sums of public money have been invested since 2009 in improving the living conditions in certain Roma settlements.

The Advisory Committee is however deeply concerned that despite these steps forward, many Roma in Serbia still live in substandard living conditions, often in makeshift shacks and lacking access to drinking water, sewerage systems and electricity. There is reportedly no overall vision as to which settlements could be improved and legalised and which ultimately need to be replaced. Forced evictions continue to occur, including before the end of the school year and in bad weather conditions. Nineteen large-scale evictions of Roma reportedly occurred in Belgrade alone between 2009 and mid-2013, in the vast majority of cases without adequate prior consultation with the residents concerned and often at very short notice (less than three days, and sometimes less than 24 hours). Residents’ property is destroyed and adequate alternative accommodation is not always found, with municipal authorities placing internally displaced families from Kosovo* and

residents registered in their municipalities in segregated container housing far from the city centre, and leaving persons not registered in their municipality with no accommodation at all. The Advisory Committee notes with particular concern that several of the 257 families evicted from the Belvil settlement in Belgrade in April 2012 were placed on buses to Niš (their registered place of residence) and then housed in a warehouse there, with no running water for three months and no electricity for a further six. The complex legal framework governing evictions combined with the lack of an express constitutional provision guaranteeing the right to adequate housing make it all the more necessary to harmonise domestic law with international standards in this field.

In the field of health, the continued support of the authorities to the employment of health mediators is welcome, with mediators employed inter alia to assist with registering Roma for health insurance purposes, vaccinations and ensuring access to health practitioners. The Advisory Committee notes with interest some reports suggesting that amendments aimed at allowing Roma without a registered residence to obtain health cards have been effective, and that it is planned to continue the activities of health mediators as well as awareness-raising activities for health professionals about the needs of Roma. It is concerned, however, that the overall health situation of Roma remains significantly worse than that of the majority population, with disproportionately high infant mortality rates, reports that many Roma women do not have access to hospitals during childbirth, and persisting difficulties in accessing health insurance despite the progress made in registering Roma for this purpose, referred to above.

The Advisory Committee observes that overall, the Roma remain greatly disadvantaged in Serbian society. The problems they face in access to identity documents, adequate housing and health care, as well as in the fields of education and employment (see further below, comments with respect to Articles 12 and 15) are moreover compounded by prejudice and discriminatory attitudes displayed towards them (see below, comments with respect to Article 6), which create additional impediments to efforts to improve their situation in practice.

Recommendations

The Advisory Committee recommends that the authorities ensure that adequate human and financial resources are allocated to achieve the objectives fixed in the Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma 2012-2014. Local self-government authorities and Roma representatives should continue to be directly involved in the evaluation of the implementation of the Strategy and in designing further steps forward in this respect.

The authorities should review carefully the impact in practice of the measures so far taken to facilitate registration of residence for persons living in informal settlements and to establish a procedure for the late registration of the birth of “legally invisible” persons. They should in particular take all necessary steps – including amending the relevant legislation or regulations if necessary – to ensure that these measures serve to assist Roma living in informal settlements to obtain the identity documents necessary to exercise other rights, as well as to enable “legally invisible” persons who would otherwise be stateless not only to register their birth but also to acquire citizenship. Judicial decisions on birth registration must also be promptly implemented.

The Advisory Committee urges the authorities to put an immediate end to forced evictions and to introduce in domestic law provisions guaranteeing the right to adequate housing and to be free of forced evictions. Where evictions occur, these must be carried out in full conformity with international standards in this field. The authorities should moreover, in consultation with representatives of the Roma, establish a clear overall plan as to which informal settlements should be improved and legalised and which should be vacated while providing adequate alternative housing to their inhabitants.

The Advisory Committee strongly encourages the authorities to continue employing health mediators with the aim of improving both access to health care of Roma and their overall health situation, and to pursue their efforts to raise the awareness of health professionals to the needs of Roma.

26. Slovak Republic

Opinion adopted on 28 May 2010

Article 4 of the Framework Convention

Legal and institutional protection against discrimination

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee invited the authorities to step up their efforts to ensure prompt and full implementation of the 2004 Anti-Discrimination Law. It also encouraged the authorities to provide the Slovak National Human Rights Centre with the support necessary for its effective functioning.

Present situation

The Advisory Committee welcomes the fact that the legislative framework for combating discrimination was strengthened through amendments, adopted in 2007 and 2008, to the Anti-Discrimination Law. The resulting legislation reinforces the previous provisions in a number of ways, i.e. by including language amongst the discrimination grounds.

The Advisory Committee notes with satisfaction that the competences of the Slovak National Centre for Human Rights (hereinafter: Human Rights Centre), the national equality body, were extended in April 2008 to cover issues relating to equality. The Human Rights Centre is entrusted with the monitoring of the implementation of the Anti-Discrimination Law and the observance of human rights in general. It is empowered *inter alia* to conduct research and independent surveys and to draw up reports and recommendations. The Advisory Committee notes that the setting-up of regional offices has offered improved access to remedies for victims of discrimination. While commending the fact that financial cuts within the public service have not affected the Human Rights Centre, the Advisory Committee notes that the assigned competences have brought an additional workload without adequate adjustment to its resources.

The Human Rights Centre is entitled to represent victims of discrimination in courts as well as to provide support through mediation. While, thus far, the Human Rights Centre appears to prefer mediation as a method for addressing cases of discrimination, some non-governmental organisations consider that litigation may be a more effective remedy in certain cases. The

Advisory Committee has been informed of eight cases alleging discriminatory practices on the basis of ethnic origin lodged before the courts by the Human Rights Centre.

According to information received by the Advisory Committee, the actual number of discriminatory acts in various sectors of economic and social life by far exceeds the number of complaints lodged before the courts. The Human Rights Centre has informed the Advisory Committee that the majority of the complaints received on the grounds of ethnicity are lodged by persons belonging to the Roma minority. These cases mainly concern discrimination in the labour market, including discriminatory recruitment procedures, and in access to certain facilities, such as shops and restaurants. It appears that there is a lack of awareness of, and confidence in, available remedies for combating discrimination amongst persons belonging to national minorities. Knowledge of bodies and organisations providing support and advice to victims of discrimination is also lacking. While recognising the efforts made to raise awareness of the provisions of the anti-discrimination legislation amongst judges, information available to the Advisory Committee suggests that the training thus far has been insufficient. According to various sources, training for legal professionals (judges, prosecutors and judicial counsellors) and police officers on anti-discrimination legislation in this field should be intensified in order to counter and sanction effectively discriminatory practices.

Recommendations

The Advisory Committee urges the authorities to redouble their efforts to raise awareness of the anti-discrimination legislation and available remedies both amongst the general public and within key public services, such as the police, the prosecuting authorities and the judiciary.

The authorities should provide the Human Rights Centre with sufficient financial and administrative support in order to create the conditions needed for ensuring its independence and capacity to provide adequate assistance to victims of discrimination.

Measures to promote full and effective equality

Recommendations from the two previous cycles of monitoring

Given the importance of positive measures, in particular for persons belonging to disadvantaged minorities such as the Roma, the Advisory Committee recommended the authorities to recognise and implement positive measures in various fields of life.

Present situation

The Advisory Committee notes that the decision of the Slovak Constitutional Court of 2005 declaring positive measures unconstitutional has not had a negative impact on the subsequent adoption of such measures. The Advisory Committee welcomes the introduction, through the amendment of the Anti-Discrimination Law in April 2008, of the possibility to introduce positive measures aiming to redress social and economic inequalities or disadvantages facing persons belonging to vulnerable groups. In spite of the aforementioned positive legislative developments, the Advisory Committee notes that there is little understanding of the concept and the objectives of positive measures within public administration and the public at large, as well as a certain reluctance in their design and subsequent implementation. The Advisory Committee finds it important that, in line with the Framework Convention, positive measures be adopted by the authorities to promote full and effective equality between persons belonging to disadvantaged

minority groups, in particular the Roma, and those belonging to the majority population in the various areas of economic, social, political and cultural life.

Recommendation

The Advisory Committee urges the authorities to increase their efforts to promote full and effective equality of persons belonging to national minorities, in particular the Roma, by designing and implementing positive measures to remedy existing disadvantages, in conformity with Article 4(3) of the Framework Convention. Awareness of the concept and of the positive effects of such measures should be raised amongst the population at large and public officials in particular.

Situation of the Roma

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, having noted the difficult socio-economic situation of the Roma and cases of discrimination against them in various sectors, the Advisory Committee called on the authorities to implement measures designed to ensure full and effective equality of the Roma.

Present situation

The Advisory Committee notes with deep concern that persons belonging to the Roma minority continue to face serious problems in most areas of life, such as housing, education, employment, healthcare and social rights (see also remarks in respect of Articles 12 and 15 below). Although a number of measures have been taken in the context of various programmes and strategies, the situation of the Roma 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. Many instances of discrimination remain unreported. Furthermore, Roma women are often at risk of multiple discrimination in many areas of life.

The Advisory Committee is concerned by discriminatory practices and attitudes against the Roma in education in spite of the authorities' efforts to improve the situation of these persons. Despite the fact that the School Act of 2008 prohibits all forms of discrimination in education, including segregation, Roma children continue to be placed in so-called 'special schools' and to be discriminated against in mainstream education (see also remarks in respect of Article 12 below).

Discriminatory practices against the Roma in the fields of healthcare and housing, continue to be reported. The Advisory Committee has been informed of instances of evictions of Roma and of segregation of Roma women in hospitals. Many Roma suffer from unemployment due *inter alia* to discriminatory practices on the labour market. According to recent statistics, 36% of persons with Roma background are reported to be unemployed and around 38% of the Roma have experienced unequal treatment when looking for work in 2009 (see also remarks in respect of Article 15 below).

Recommendations

The Advisory Committee strongly urges the authorities to take resolute measures to prevent and sanction more vigorously discriminatory practices against the Roma in all sectors. In this respect, the behaviour of employers, landlords and health care providers must be monitored and those responsible for discriminatory practices brought to justice.

Efforts should be stepped up to tackle instances of segregation in the healthcare and educational sectors. In doing so, awareness of the rights of persons belonging to national minorities should be raised amongst public officials and medical staff in order to eliminate discriminatory practices in these fields.

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

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee noted reports of *de facto* discrimination against Roma women in health care facilities, including allegations of sterilisation of Roma women without their prior free and informed consent. The authorities were requested to monitor closely judicial developments in civil proceedings and, if need be, to consider the reopening of criminal investigations on allegations of bodily harm or other criminal offences. In addition, they were requested to ensure that the newly reinforced legislative guarantees linked to free and informed consent and access to medical files be consistently applied in practice. More generally, the authorities were encouraged to make increased efforts to adapt health care services to the linguistic and other needs of the Roma, in particular Roma women.

Present situation

The Advisory Committee welcomes the fact that the Slovak legislation contains strengthened safeguards against sterilisation of women without their prior free and informed consent. The Healthcare Law provides that sterilisation can only be performed upon a written request and informed written consent of individuals concerned or their legal representatives. The respective authorities are also required to provide information on alternative methods of contraception and family planning and on the consequences of sterilisation on the women concerned. In spite of this positive legislative development, non-governmental sources report that the legislative provisions in question have not been consistently applied in practice, in particular as regards the awareness-raising component. The Advisory Committee is concerned about reports which suggest that there is little awareness amongst the medical personnel on issues relating to informed consent and prevention.

In the judgment of *K.H. and others v. the Slovak Republic*, the European Court of Human Rights found a violation of the right to private and family life of the eight female applicants belonging to the Roma minority. The authorities had denied them access to their medical records, which could have been used as evidence that they had been sterilised without their prior free and informed consent after giving birth. The Healthcare Law (section 25) has been amended and now provides legislative guarantees for the access of the persons concerned, or their legal representatives to their medical records, including by allowing them to take photocopies. Given the persistent suspicion of the Roma women concerned that their infertility might have resulted from a sterilisation procedure performed in hospitals without their consent, the Advisory Committee welcomes this measure and expects that it will be duly applied in practice.

The Advisory Committee notes that the authorities have initiated civil and criminal investigations into allegations of coercive sterilisations of Roma women in the period under review. It has further been informed of complaints of sterilisation without their prior free and informed consent previously filed before courts by Roma women in hospitals and notes with concern that these investigations appear not to have been carried out with the necessary promptness, efficiency,

depth and transparency. According to non-governmental organisations, investigations have concentrated on the fact that written consent had been obtained without questioning the circumstances of signatures nor how the affected women had been informed. While some proceedings are still pending, others were suspended without finding a violation.

Recommendations

The Advisory Committee strongly reiterates its previous recommendation that the authorities must continue to follow closely judicial developments in court proceedings on allegations of sterilisation without their prior free and informed consent and draw conclusions from the results of these cases. The authorities must ensure that complaints alleging sterilisation without full and informed consent at any time be effectively investigated and properly remedied without further delay.

The Advisory Committee urgently calls on the authorities to ensure that the existing legislative guarantees concerning sterilisation procedures are properly and consistently applied in practice. Medical staff must receive appropriate training on the necessity to inform the Roma population on alternative methods of contraception adapted to the cultural and linguistic environment of the persons concerned.

Data collection

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee invited the authorities to improve the collection of statistical data in different areas, such as healthcare and employment, through, for example, *ad hoc* studies and special surveys, while providing for adequate safeguards in the field of personal data protection.

Present situation

The Advisory Committee notes that the Law on the Protection of Personal Data allows for the gathering and processing of data on ethnicity in particular circumstances and with the written consent of the individuals involved and that it includes guarantees with respect to data protection. Despite this fact, the legislative safeguards related to data protection seem to be incomplete and related procedures cumbersome. Ethnic data in different fields is scarcely collected by the authorities. The Advisory Committee therefore welcomes that the authorities have envisaged elaborating, by 2011, a concept of ethnic data collection and the completion of the legislative framework in this field.

The Advisory Committee is pleased to note that the authorities are aware of the importance of obtaining accurate information about the living conditions and make up of ethnic groups for designing and implementing measures to ensure full and effective equality. The Ministry of Education, for instance, gathers data on the ethnic composition of pupils and the language of instruction in schools. The Advisory Committee, however, notes with regret that there is still a certain reluctance amongst public officials to gather data on ethnicity in different sectors, such as employment. As a result, data is mainly collected by non-governmental organisations, in the context of surveys and sociological studies.

Recommendation

The Advisory Committee encourages the authorities to step up their efforts to collect data on the situation of ethnic groups in all sectors, including in employment and social and health services. Care should be taken to ensure that the collection, processing and dissemination of 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.

27. Slovenia

Opinion adopted on 31 March 2011

Article 4 of the Framework Convention

Combating discrimination: legal and institutional framework

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee emphasised the need for monitoring and awareness-raising of discrimination in society. It also encouraged the authorities to ensure smooth operation of the institutions established under the Act on Equal Treatment of 2004. Additionally, it invited the authorities to provide full support to the work of the Ombudsman.

Present situation

The Advisory Committee notes that the Law on Equal Treatment of 2004 was amended in 2007. According to the information available, the Advisory Committee understands, however, that further improvements are needed to ensure full and effective protection against discrimination. It is, in particular, informed that the existing remedies in cases of discrimination are not sufficiently efficient. In this context, the Advisory Committee deplores the lack of effectiveness of the institution of the Advocate of the Principle of Equality established under the Act on Equal Treatment. It appears that this institution lacks independence, financial and human resources and that its competences are too limited to allow it to serve as an effective remedy for potential victims of discrimination.

The Advisory Committee also notes that there is a lack of regular monitoring of discrimination and of activities to raise awareness of society about these problems, including within the judiciary and the police. Indeed, a lack of awareness among the population of the existing legislation in this field and of the remedies available might explain the reported low number of complaints for discrimination on grounds of ethnic origin. However, the Advisory Committee understands that the Advocate of the Principle of Equality who could in principle ensure regular monitoring of discrimination and carry out awareness-raising activities is, with only one staff member, regrettably unable to do so.

Against this background, the Advisory Committee welcomes the fact that the authorities recently set up a working group to remedy these shortcomings by means of the elaboration of a general strategy to combat discrimination and to improve the implementation of existing remedies. It expects that this work will significantly improve the efficiency of the mechanisms to combat discrimination.

The Advisory Committee is pleased by the continued and fruitful involvement of the Ombudsman Office in issues relating to national minorities. The Office is regularly making recommendations on how to improve the protection of rights of persons belonging to national minorities, as well as to non-recognised groups. It also substantially contributed to the evolution of the existing legislation on minorities towards increased clarity and a more inclusive interpretation. It understands, however, that this institution only receives few petitions related to discrimination based on ethnic origin and that this could partly be explained by a lack of resources for the Ombudsman Office to reach out to the most vulnerable minority communities, such as the Roma.

Recommendations

The Advisory Committee urges the authorities to take, as a matter of priority, all appropriate measures to ensure that effective remedies are available to potential victims of discrimination. It also invites them to intensify their actions to raise awareness of discrimination-related issues in society, including in the judiciary and law enforcement agencies.

The Advisory Committee invites the authorities to ensure that the Ombudsman Office is granted all the support it needs to continue to carry out its mission effectively, including the necessary financial and human resources.

Situation of Roma in the area of housing

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee invited the authorities to step up initiatives and programmes to improve the situation of Roma in the areas of housing, employment and education, with full involvement of the Roma representatives.

Present situation

The Advisory Committee welcomes the fact that the authorities have, in recent years, taken a number of important steps to improve the situation of Roma in various areas of life, including housing, employment and education (see also remarks under Articles 12 and 15 below). In particular, the Act on the Roma Community in the Republic of Slovenia was adopted in 2007, with a view to more clearly defining the specific rights of the Roma community as well as clarifying the responsibilities of the various levels of authorities for implementing these rights. Slovenia is also actively engaged in the process of the Decade of Roma Inclusion. Further comprehensive programmes have been launched by the authorities, such as the National Programme of Measures for Roma for 2010-2015 (see also remarks under Article 15 below).

The Advisory Committee is nonetheless aware that, despite progress achieved in recent years, many Roma continue to face discrimination in everyday life, in particular in the area of housing in which local authorities play a major role. It is concerned, on the one hand, by reports indicating that Roma have limited access to social housing due to a shortage of social housing in general, but also to the fact that some of the municipalities with a substantial Roma population do not apply for public tenders for public housing. On the other hand, they are often discriminated against in the private housing market. In some municipalities, Roma have reportedly been prevented from buying houses outside of Roma settlements, which perpetuates geographical segregation. The Advisory Committee has also been informed of cases where the municipal authorities have

reportedly introduced priority criteria for access to social housing which directly discriminate against Roma (such as completion of higher education). Additionally, various sources indicate that in certain villages, the process of privatisation of land has led to forced evictions of Roma, without providing them with alternative accommodation options. Lastly, the Advisory Committee notes with deep concern that, while the situation differs greatly from one region to another, a number of Roma settlements, notably in the region of Dolenjska, still have no access to running water and electricity and their inhabitants continue to live in isolated settlements in substandard conditions.

Against this background, the Advisory Committee is pleased to note that the authorities have acknowledged these problems and started to take measures to tackle them. The Expert Group for Solving Spatial Issues in Roma Settlements was set up in 2006, with a view to preparing for the legalisation of Roma settlements. The Advisory Committee understands that the government intends to ensure that the local authorities concerned will prepare acts on spatial planning with a view to legalising Roma settlements. The Advisory Committee finds it particularly important for the government to ensure that local authorities effectively comply with their obligations in this area and with regard to the protection of national minorities in general. In this context, it welcomes the organisation of public tenders in 2007 and 2008 for municipalities to improve communal infrastructure in Roma settlements and notes with satisfaction that some municipalities, such as Lendava/Lendva and Novo mesto, already completed the legalisation of some Roma settlements and improved infrastructures therein.

Recommendations

The Advisory Committee invites the authorities to continue to take vigorous measures to improve the housing conditions of the Roma. It is also essential to condemn firmly and to combat any form of discrimination against Roma in this area.

Additionally, the authorities should ensure effective implementation at national and local levels of policies and programmes for improving Roma housing conditions, including by means of awareness-raising on minority rights.

28. Spain

Opinion adopted on 22 March 2012

Article 4 of the Framework Convention

Legislative and institutional framework against discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to redouble efforts to raise awareness about the problems of discrimination and available remedies, both among the general public and specific circles.

It also urged the authorities to establish without further delay the Council of Equal Treatment and provide it with sufficient resources.

Present situation

The Advisory Committee notes with satisfaction that a comprehensive Bill on Equal Treatment and Non Discrimination has been elaborated since the adoption of its second Opinion, which improves considerably the anti-discrimination legislation in force on various aspects, including *inter alia*, the addition of new grounds of discrimination (including discrimination based on language), the creation of a Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Racial or Ethnic Origin (hereinafter Council for Equal Treatment) with larger competencies than the Council that was established in 2010 (see remarks below), as well as the requirement regularly to collect and analyse data on discrimination. The preparation of the draft law included intense consultations with NGOs involved in anti-discrimination work, which is commendable. Additionally, the adoption of a single, comprehensive law would certainly contribute to increased awareness of anti-discrimination provisions and remedies among the population at large, as well as among the judiciary and law enforcement (see remarks on Article 6 below). Therefore, the Advisory Committee strongly believes that the draft law should be adopted without delay.

The Advisory Committee notes that the Council for Equal Treatment was set up in 2010, as foreseen in the anti-discrimination legislation adopted in 2003. The Advisory Committee notes that the Council's mandate includes assistance to victims, awareness-raising and training on discrimination, research and data collection, as well as the promotion of positive measures. It notes with satisfaction that the Council, in its short time of existence, has already published very useful research on the situation in the field of discrimination. The Advisory Committee also strongly welcomes the creation of a Network of Assistance to Victims of Discrimination throughout the country, which involves various NGO's that receive complaints at the local level.

However, the Advisory Committee regrets the lack of means allocated to the Council, and to the Network of Assistance to Victims, which sets a limit to the possible impact of the work carried out in this context. The availability of human and financial resources is, in general, problematic as far as the functioning of the Council is concerned and the Advisory Committee considers that for the Council to continue its fruitful work in the long term, it is in need of more support. Additionally, it regrets that the current mandate of the Council does not allow it to bring discrimination cases to courts or to intervene in court cases on behalf of victims of discrimination. Lastly, the Advisory Committee is concerned by the lack of structural independence of the Council, which operates within the framework of the Ministry for Health, Social Services and Equality and whose President is appointed by the administration.

The Advisory Committee is also pleased to note that the Ombudsman's office (*Defensor del Pueblo*) continues to play a very important role in combating discrimination and racism, both at central and local levels (see also remarks in respect of Article 6 below) and that the level of compliance with its recommendations continues to be high. However, the Advisory Committee notes that the number of complaints addressed by Roma to the Ombudsman's office on grounds of discrimination is very low. This general trend towards low reporting was confirmed by other institutions, such as the Council for Equal Treatment, which estimates that the number of victims of discrimination who report their cases to the authorities is only around 4%. Information provided to the Advisory Committee indicates that there is, in general, a lack of confidence among persons most vulnerable to discrimination, such as the Roma, in the effectiveness of the institutions responsible for dealing with discrimination cases, and in particular the police. It is therefore of the

utmost importance that the Council for Equal Treatment, and other bodies, can continue effectively to raise awareness of anti-discrimination legislation and existing remedies.

Recommendations

The Advisory Committee calls on the authorities to adopt without further delay comprehensive anti-discrimination legislation, possibly based on the draft anti-discrimination law that has recently been prepared in close consultation with civil society organisations.

The Advisory Committee invites the authorities to continue to support the work of the Council for Equal Treatment and to allocate sufficient resources, so that it can work effectively and independently to support victims of discrimination. In general, it is essential that it can continue to raise awareness of discrimination in society, including among the persons most at risk of discriminatory treatment.

Continued support should also be provided for the work of the Ombudsman, at state and regional levels.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged 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.

Present situation

Various interlocutors of the Advisory Committee underline that, despite progress achieved in recent years, there remain gaps in terms of data and information on the situation of the Roma, especially at local and regional levels. This has a negative impact on the identification of the magnitude of the problems faced by the Roma and limits the effectiveness of the policies and measures that have been designed to tackle these problems. In particular, according to many interlocutors, funding allocations do not match the needs due to a lack of accurate information on the numbers and geographical distribution of the Roma population (see also remarks below).

While the official position regrettably remains that no data on the ethnic origin can be collected, the Advisory Committee is pleased to note that the overall perception of the need for comprehensive and up-to-date information on the situation of Roma has increased among those in charge of policies and programmes to improve their situation. The Advisory Committee notes with satisfaction that the authorities make extensive use of data and information gathered by NGOs and other relevant actors on the situation of the Roma in various areas of life. The quality and quantity of data collected also seem to have improved in the last few years and the overview of the situation is more accurate than it used to be thanks to the practice of cross-referencing the various data sources available, as is reportedly done by the ministries concerned when evaluating existing needs. Moreover, the Advisory Committee welcomes the fact that data and information collection on the situation of specific groups, including the Roma, is part of the mandate of the Council for Equal Treatment and that the draft law on discrimination, as well as the Action Plan for

the Roma Community Development for 2010-2012 (see remarks below), provide for increased data collection.

Moreover, most of the organisations active in the field of anti-discrimination (both non-governmental and public bodies) underline as a source of major concern the lack of data and information in the justice system on racially-motivated offences or offences motivated by discrimination. This gap is a major obstacle to a more adequate processing of discrimination cases in courts and to efforts made to raise the awareness and training of the judiciary in these matters. Among the main causes for the lack of data is the absence of adequate recording by the police of the racist or discriminatory motivation of offences (see also remarks on Article 6 below).

Therefore, the Advisory Committee welcomes the changes introduced, as of January 2011, to the statistical system of the police, aiming at a more adequate registration of racially-motivated offences, as well as the commitment expressed by the authorities, in November 2011 to improve the procedures for recording by the police of racist incidents, including through the training of police officers. It expects that these decisions will swiftly result in a more adequate and systematic recording by the police of discriminatory and racist offences. It also believes that the co-operation that was undertaken in Catalonia between the Public Prosecutor for Hate Crime and Discrimination and the Catalanian police (*Mossos d'Esquadra*) in order to improve the recording and processing of racially-motivated offences is promising and should be replicated in other regions. Lastly, it expects that the commitment taken by the authorities as part of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Other Related Forms of Intolerance, adopted in November 2011, to improve substantially the system of data collection in the justice system on racially-motivated and discrimination related offences will be implemented effectively and swiftly.

Recommendations

The Advisory Committee invites the authorities to continue and broaden the systematic collection of data and information on the situation of the Roma in the various areas of life, in line with international standards in the field of personal data collection.

It is particularly urgent to develop a comprehensive system of data collection on discrimination in the justice system, so as to promote a more effective implementation of the anti-discrimination legislation in force. Training of the police in recording discrimination related offences must also be improved, drawing on existing good practices that have recently been implemented (see also recommendations under Article 6 below).

Promotion of full and effective equality of Roma

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to seek further resources to support specific programmes aimed at ensuring effective equality of Roma, especially women, in their access to employment, housing, health care and other social services.

Present situation

Since the adoption of the second Opinion of the Advisory Committee, the authorities have continued to implement policies to improve the situation of Roma in various areas of life, both at state level and at the level of the Autonomous Communities. They have, in particular, elaborated the Action Plan for the Roma Community Development for 2010-2012, in close co-operation with the State Council for the Roma People (see remarks on Article 15 below). The authorities have also prepared a National Strategy for the Inclusion of the Roma Population until 2020, as part of the EU Framework for national Roma integration strategies. The Action Plan for 2010-2012 follows on the Programmes for the Development of the Roma People, in place since 1989. The Advisory Committee welcomes the fact that this Plan is transversal and covers all the relevant areas of life and that it has been designed based on the data that are available on the situation of Roma in the different sectors, such as employment, housing or health (see remarks above on data collection). Although incomplete, these data reveal persisting inequalities in employment, health, education and housing, despite substantial progress achieved in the last 10-15 years (see remarks under Articles 12 and 15 below).

Therefore, the Advisory Committee reiterates the concern expressed in its second Opinion that the funding provided by the central, autonomous and local authorities for the implementation of the Action Plan, and previously, the Roma Development Programmes, is insufficient to meet existing needs, especially as it has markedly diminished as of 2009. Moreover, interlocutors of the Advisory Committee have underlined that no specific budgetary allocations have been earmarked within the budgets of the various institutions concerned by the implementation of the Action Plan 2010-2012. The Advisory Committee notes that the amounts indicated in the Action Plan (around 107 million € for 2010-2012) represent the overall budgets of the institutions involved, including funds for programmes which do not target the Roma population as such. Moreover, the Advisory Committee is concerned by reported delays in starting the implementation of this Action Plan.

Furthermore, the Advisory Committee notes the concern expressed by some of its interlocutors that, although the authorities are implementing commendable policies through intermediaries, such as the *Fundación Secretariado Gitano* in the field of employment, there is insufficient direct involvement and concrete public policies of the authorities to promote, for instance, the employment of the Roma.

Additionally, the Advisory Committee is concerned by the impact on the Roma population of the severe economic crisis affecting Spain. It notes with deep concern the results of a recent study indicating that persons belonging to various ethnic groups, among which the Roma, feel that discrimination against them in various spheres of life has increased since the beginning of the economic crisis. According to the information collected by the Advisory Committee during its visit to Spain, Roma are disproportionately affected by unemployment as their unemployment rate in 2011 was estimated to be around 37% whereas it was 21% for the population as a whole. This might result from various factors, among which the lower levels of qualification of many Roma, but also from discrimination in the labour market. The Advisory Committee is also alarmed by information indicating that discrimination in access to housing is increasing with the crisis, and that the most vulnerable groups, among which the Roma, are particularly affected by this problem (see also remarks under Article 15 below). Against this background, the Advisory Committee welcomes the commitment expressed by the Andalusian authorities to avoid financial cuts in programmes aimed at the labour market and social integration of disadvantaged groups, in particular the Roma, so as not to provoke their further marginalisation.

In general, while acknowledging that Spain is experiencing a difficult economic and financial situation, the Advisory Committee strongly believes that the authorities should ensure that policies and programmes aimed at supporting the integration in society of the most marginalised groups, including part of the Roma population, are not disproportionately affected by budgetary cuts, as they are essential to ensure long-term social cohesion. In this respect, it is also essential to assess adequately the potential impact of any budgetary cut on the situation of the disadvantaged Roma population.

Furthermore, discrimination in access to public services continues to be high, as such cases constitute around 50% of the complaints received by the Network of Assistance to Victims of Discrimination. Numerous cases of denial of access to public places or of denial of service, such as bars and other places of entertainment, have been reported, which is of deep concern to the Advisory Committee. Roma are also disproportionately targeted by the police in “stop-and-search” operations (see remarks under Article 6 below).

Recommendations

The Advisory Committee calls on the authorities to implement effectively the policies and programmes to improve the situation and integration of the Roma in all areas of life. These programmes, including the Action Plan for the Roma Community Development for 2010-2012 and the National Strategy for the Inclusion of the Roma Population until 2020, must be adequately resourced and it is important to ensure that financial restrictions do not have a disproportionate impact on them.

Particular attention should be paid to assessing the impact of the economic crisis on discrimination affecting the Roma, especially the most disadvantaged members, including through improved data and information collection. All allegations of discrimination in the provision of services must be effectively investigated and sanctioned as appropriate.

29. Sweden

Opinion adopted on 23 May 2012

Article 4 of the Framework Convention

Non-discrimination legislation

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called on the Swedish authorities to take measures to widen the scope of legislative guarantees against discrimination on ethnic and other pertinent grounds.

Present situation

The Advisory Committee welcomes the entry into force on 1 January 2009 of the new Discrimination Act (2008:567). It notes that the European Commission against Racism and Intolerance (ECRI) has recently had occasion to examine this legislation in depth while drawing up its fourth report on Sweden. The Advisory Committee refers to ECRI's detailed findings and recommendations in this regard. It also welcomes the fact that the Discrimination Act introduces a

new general prohibition on discrimination in the public sector and increases the penalties that may be imposed on parties found to have breached the prohibition on discrimination. It notes that the Act covers, *inter alia*, discrimination associated with a person's ethnicity (defined as their national or ethnic origin, skin colour or other similar circumstance) or with their religion or other belief. The Advisory Committee regrets, however, that the Discrimination Act does not expressly cover discrimination based on language – a point that may be of concern given the difficulties experienced by persons belonging to national minorities in exercising their rights with respect to the use and learning of their minority languages (see further under Articles 10, 12 and 14 below).

Recommendation

The Advisory Committee recommends that the Swedish authorities extend the grounds set out in the new Discrimination Act (2008:567) so as to cover expressly discrimination based on language.

Monitoring of ethnic discrimination

Recommendations from the two previous cycles of monitoring

In previous monitoring cycles, the Advisory Committee concluded that the authorities should increase their efforts to monitor and address cases of discrimination against persons belonging to national minorities and emphasised that the planned reform of the various structures dealing with discrimination should not weaken antidiscrimination work generally and should make the relevant structures more accessible to persons belonging to national minorities.

The Advisory Committee also recommended that the Swedish authorities ensure that legislation provides adequately for positive measures aimed at achieving full and effective equality not only in employment but also in other relevant fields.

Present situation

The Advisory Committee is pleased to note that the Ombudsman against Ethnic Discrimination (since replaced by the Equality Ombudsman) published a report in 2008 on discrimination against the Sami, which drew attention to the effect on the Sami of individual and structural discrimination and negative perceptions of the Sami as a group and recommended that a series of measures be taken to improve their participation in public affairs and enhance language acquisition. Following on from a previous project on discrimination against Roma, the Equality Ombudsman published a wide-ranging report on Roma rights in 2011. This report emphasised the continuing impact on Roma of discrimination in daily life, identified a number of knowledge gaps – both as regards available data concerning the access of Roma to rights on equal terms and as regards their knowledge of their rights – and analysed the role of litigation in bringing about change.

The Advisory Committee also notes with interest that a 2010 initiative to analyse the health status of persons belonging to national minorities was positively assessed by the authorities, which decided to extend it to other areas of daily life in order to build up a clearer picture of the situation of persons belonging to national minorities in access to social rights.

The Advisory Committee welcomes the above initiatives as important contributions both to monitoring discrimination against persons belonging to national minorities and to addressing such discrimination. Nonetheless, it regrets that, overall, insufficient information is available about discrimination against persons belonging to national minorities. It notes that the situation may vary from one national minority to another and that efforts to monitor and address the specific forms of discrimination experienced by them should be increased.

The Advisory Committee welcomes the expansion of the scope of active measures provided for under the new Discrimination Act so as to include active measures to make the workplace more inclusive and to promote equal rights and opportunities in the field of education, regardless, *inter alia* of ethnicity and religion. It regrets, however, that the opportunity was not taken to provide for positive measures in all relevant fields of daily life, in particular as regards access to social rights such as health and housing, and that special measures are still not generally accepted in Sweden. It reiterates that Article 4, paragraph 2 of the Framework Convention provides that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require States Parties to adopt special measures that take into account the specific conditions of the persons concerned. The Advisory Committee recalls that such measures may take a variety of forms and are justified, both in time and in scope, only to the extent necessary in order to achieve the legitimate aim of full and effective equality.

The Advisory Committee notes that the four Ombudsman bodies previously competent to deal with different grounds of discrimination have been merged, with effect from 1 January 2009, into a single body, the Equality Ombudsman. The aim of this development, according to the authorities, is to ensure the most effective possible monitoring of compliance with the Discrimination Act and take better account of cases of multiple discrimination. The Advisory Committee refers to ECRI's detailed findings and recommendations in this regard. It also observes that the Ombudsman's capacity to deal with the protection of the rights of persons belonging to national minorities is limited, both because of the breadth of its activities and because the Ombudsman is only empowered to handle cases in which an issue of discrimination is at stake. Nonetheless, the activities of the Equality Ombudsman and other bodies dealing with antidiscrimination issues remain important for the protection of the rights of persons belonging to national minorities.

The Advisory Committee notes that since the closure of the Integration Board, responsibility for state-level funding of antidiscrimination bureaus has passed to the Swedish National Board for Youth Affairs. However, it regrets that this funding has been reduced in recent years and that some antidiscrimination bureaus have been forced to close. It stresses the importance of being able to tackle questions of discrimination effectively at local level and notes that financial and institutional stability can contribute to improving the effectiveness of such actions.

Recommendations

The Advisory Committee encourages the Swedish authorities to step up their efforts to monitor ethnic discrimination against persons belonging to national minorities. More systematic and regular efforts are in particular needed to collect disaggregated data, in line with personal data protection standards, so as to enable the adoption of targeted measures to address discrimination against persons belonging to national minorities.

The Advisory Committee recommends that the Swedish authorities expand the provision made in domestic law for special measures aimed at achieving full and effective equality as prescribed by Article 4, paragraphs 2 and 3 of the Framework Convention. Such measures should cover all relevant fields of daily life, including employment and education as well as other areas such as housing and health.

The Advisory Committee encourages the Swedish authorities to ensure that sufficient resources are made available to the Equality Ombudsman and other bodies dealing with antidiscrimination issues that affect persons belonging to national minorities in order to enable them to carry out these tasks effectively. It also draws attention to the importance of ensuring that structural reforms do not hinder the utilisation of the experience and expertise of existing or former structures dealing with issues related to national minorities.

30. Switzerland

Opinion adopted on 5 March 2013

Article 4 of the Framework Convention

Institutional framework for combating discrimination

Recommendations from the previous two monitoring cycles

During the previous monitoring cycles, the authorities were invited to extend the anti-discrimination legislation in order to provide effective remedies in all fields, and to develop monitoring measures in these fields. Moreover, the Advisory Committee recommended reinforcing the institutions responsible for combating racial discrimination, notably by setting up an independent human rights agency.

Present situation

The Advisory Committee regrets that the authorities' position has not changed on the matter of adopting comprehensive anti-discrimination legislation. According to the authorities, such legislation is unnecessary in view of the legal framework currently in force, which already provides for effective action against all forms of discrimination. However, observing that the general public appeared to be fairly unfamiliar with the anti-discrimination legislation, the authorities set up various awareness-raising initiatives. In this context, the Advisory Committee took note of the publication in 2009 by the Service for Combating Racism (SLR) of a legal guide to racial discrimination describing the legal remedies available in cases of discrimination. Between 2010 and 2012, the SLR also organised approximately forty training courses based on this guide.

The restrictive approach of the government concerning a comprehensive anti-discrimination law is not shared by the Federal Commission against Racism (CFR) or by a number of parliamentarians. The same holds for civil society representatives. During the visit, these interlocutors informed the Advisory Committee that they support the adoption of a comprehensive and coherent law against discrimination. They consider the norms in force in this field incoherent and the legal bases difficult to apprehend by individuals who feel that they have suffered discrimination and who also often fear that the procedural costs will be disproportionate to the chances of success. This is the reason why, in 2010, considering that protection against discrimination among private individuals

was under-developed, the CFR published a report proposing measures to reinforce the Swiss legal system in terms of protection against racial discrimination.

While recognising that most of its interlocutors, including the representatives of minorities, do not claim or feel that they are victims of discrimination, the Advisory Committee observes that very few cases of discrimination are taken to court and that the authorities explain this situation by the fact that the victims of discrimination are often deterred from taking legal action through fear and uncertainty. In fact, cases are not brought before the courts due to the financial risk of incurring significant loss, as bringing court proceedings is costly if the case is not won. Consequently, the Advisory Committee considers that the existing legislation and legal remedies could be more frequently applied if the public at large and potential victims of discrimination had a better knowledge of them. Therefore, the Advisory Committee considers that there is a clear need for a new, comprehensive anti-discrimination law and for more determined measures from the authorities to ensure better knowledge among Swiss society of the relevant legislation and the available remedies.

The Advisory Committee notes with interest the introduction in 2008 of the “Consultation Network for Victims of Racism”, which has become the main body responsible for nationwide monitoring of racial discrimination in Switzerland. All cases of discrimination are registered in a common database (DoSyRa), and each year a report analyses the changing face of racist incidents, bringing the conclusions to the attention of the public and the government. According to the latest report (2011), the number of racist incidents, particularly cases of islamophobia, is decreasing, the main victims being individuals from sub-Saharan Africa. However, despite this positive trend and the efforts at information and prevention made by the authorities, the Network suggests that these figures do not reflect the real incidence of racist acts.

In connection with the discussions on the possible setting up of an Ombudsman’s Office, the Advisory Committee notes that the Federal Council, after holding extensive consultations, concluded that such an institution was unnecessary, preferring to set up, in 2011, the “Swiss Centre of Expertise in Human Rights” (CSDH). The Advisory Committee notes that several cantons have introduced Ombudsman institutions responsible for raising awareness amongst the population and the administration of respect for human rights.

Recommendations

The Advisory Committee calls on the authorities to reconsider their position concerning the possible adoption of comprehensive anti-discrimination legislation and to continue systematically collecting statistical data in matters of discrimination in order to monitor the situation.

The Advisory Committee invites the authorities to continue and intensify their efforts to improve public knowledge of the remedies available against discrimination, notably by devoting special attention to those persons who are most exposed to discriminatory attitudes, so that they can enjoy comprehensive information on their rights and the existing legal remedies.

Discrimination of Travellers

Recommendations from the previous two monitoring cycles

During the previous monitoring cycles, the Advisory Committee recommended that the authorities devise practical measures to overcome the problems of discrimination facing Travellers, particularly in connection with the housing conditions linked to their itinerant lifestyle.

Present situation

The Advisory Committee notes that Travellers who have retained an itinerant lifestyle and exercise itinerant trading activities are still encountering obstacles, particularly on the administrative front. According to a number of interlocutors, Travellers are often obliged to accept continuous employment in a single place in order to continue to receive the weekly social aid allowance (directly payable at the office of their municipality of residence), a procedure that is incompatible with their itinerant way of life and that, in their view, causes indirect discrimination. Furthermore, the Federal Commission against Racism pointed out that children who travel with their families in the summer months (usually from April to October) cannot always obtain the same level of school certificates as the children of settled families.

The Advisory Committee observes that the failure to adapt the rules governing the payment of weekly social aid allowances to the situation of Travellers places sometimes a disproportionate burden on them compared with other recipients of these allowances. This situation is incompatible with the prohibition of discrimination contained in the Framework Convention. The Advisory Committee recalls that adequate measures in order to promote full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be considered to be an act of discrimination. In this connection, the Advisory Committee notes with interest that, in its judgment of 15 March 2012 the Federal Court held there was indirect discrimination against a disabled woman belonging to the Travellers community. The Court found that the refusal of the social services to take into account the itinerant lifestyle of a disabled Traveller, when assessing whether she should be granted a disability allowance, amounted to indirect discrimination. The Advisory Committee notes with satisfaction that in this case, the Federal Court extended its previous case-law, in which it had already recognised the necessity to take into account the legitimate interest of Travellers to retain their particular identity and traditions, to the field of social benefits.

Recommendation

The Advisory Committee urges the authorities to adopt more resolute measures to promote the full and effective equality of all Travellers and their traditional way of life by swiftly, *inter alia*, implementing the recent Federal Court decision.

31. "the former Yugoslav Republic of Macedonia"

Opinion adopted on 30 March 2011

Article 4 of the Framework Convention

Legal and institutional framework for combating discrimination

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee found shortcomings in the legal framework offering protection against discrimination and urged the authorities to examine existing anti-discrimination provisions and take the necessary legislative steps, including, as appropriate, through the adoption of comprehensive anti-discrimination legislation.

The Advisory Committee also asked the authorities to make more determined efforts to raise public awareness of human rights and of action to combat discrimination, among others by involving and supporting NGOs active in this field in order to increase their capabilities.

Present situation

The Advisory Committee welcomes the adoption of the Anti-Discrimination Law in April 2010 (in force as from 1 January 2011) which provides a clear legal basis for protection against discrimination, including in the field of employment. The law provides protection against and prohibits discrimination (among others) on racial, ethnic, national or religious grounds and establishes the courts' jurisdiction in alleged cases of discrimination. The Advisory Committee notes the shifting of the burden of proof envisaged in the legislation, the provision enlarging the scope of application of the law to private relations, and the provision allowing third-parties to intervene as *amicus curiae* in cases of discrimination.

The Advisory Committee also notes the ongoing establishment of the Commission for Protection Against Discrimination (CPAD) which has been empowered, together with the courts, to enforce the law and in particular to receive complaints from individuals, initiate proceedings before competent bodies in cases of alleged discrimination, to review draft legislation, suggest amendments to existing legal acts, and to make recommendations to state and municipal authorities on the elimination of discriminatory practices and on repealing their previous decisions.

Due to the fact that the CPAD had not started its operation at the time of consideration of this Opinion, the Advisory Committee is not in a position to make an assessment of its composition, functioning and impact.

The Advisory Committee notes that the Office of the Ombudsman continues to play an active role in protecting human rights in "the former Yugoslav Republic of Macedonia" and it received a substantial number of complaints from persons belonging to all ethnic communities (3,632 in 2009, last year for which figures are available). The Advisory Committee notes that these complaints concerned a large variety of issues including a small number of complaints (20) alleging discrimination and inadequate or inequitable representation.

According to the information provided by the Ombudsman in the Annual Report for 2009, the legally guaranteed principle of adequate and equitable representation of persons belonging to all ethnic communities has not been sufficiently implemented in the state administration bodies and other public institutions and further efforts need to be undertaken towards integration of all persons belonging to minorities through the mechanisms of adequate and equitable representation in all institutions of the legal and political system (see also comments under Article 15 below). The Advisory Committee further notes that the Ombudsman recorded nine complaints from Roma alleging ill-treatment by the police.

The Advisory Committee further notes that the applicants to the Ombudsman are reluctant to complain against discrimination as such and formulate their grievances in a way which allows the Ombudsman to seek redress concerning a specific issue, in particular as regards employment or working conditions.

Recommendations

The Advisory Committee encourages the authorities to provide the newly established Commission for Protection Against Discrimination with the appropriate financial and human resources and the composition and structures necessary to fulfil its duties effectively and independently.

The Advisory Committee urges the authorities to continue to support the Office of the Ombudsman, in order to allow it to carry out its duties effectively and independently.

Full and effective equality. The situation of the Roma

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee, having noted discriminatory practices against the Roma, called on the authorities to take appropriate steps to remedy the situation. In particular, it urged the authorities to step up, in close co-operation with the Roma, their efforts to ensure full and effective implementation of the National Strategy for the Roma and the Action Plan to combat discrimination against the Roma in all fields.

The Advisory Committee also called on the authorities to eliminate any undue requirements for registration with employment agencies.

The Advisory Committee further urged the authorities to raise awareness and provide assistance in the relevant fields, such as employment, health care and education, to improve the situation of women belonging to different ethnic communities, in particular, the Roma women.

Present situation

The Advisory Committee welcomes the continued efforts of the Macedonian authorities to combat discrimination and integrate Roma into society. In 2005, the Strategy for the Roma and the National Action Plan for the Decade of Roma Inclusion 2005-2015 were adopted, which laid down a set of tasks geared to equal treatment in the core areas of employment, housing, education, and access to health care.

The Advisory Committee notes, however, that according to the information provided by Roma representatives, many projects contained in the National Action Plan have been downsized or remain unimplemented. The Advisory Committee was further informed that the projects which have been implemented, such as the inclusion of Roma in pre-school education, and scholarships for Roma secondary school students are financed to a large part from non-budgetary sources, and only to some degree by the state budget itself. Additionally, many initiatives remain pilot projects and there is no systematic follow-up provided by state institutions.

The Advisory Committee recognises significant efforts undertaken by the Macedonian authorities to tackle the discrimination of Roma children in access to education. It notes with concern, however, in this context, the unacceptable level of overcrowding in the Suto Orizari School attended primarily by Roma children (see related comment under Article 12 below).

The situation as regards employment of the Roma remains unacceptable. According to the information obtained by the Advisory Committee, more than 70% of Roma are unemployed. The Advisory Committee, while acknowledging that the unemployment rate in "the former Yugoslav Republic of Macedonia" has been high in general, standing at over 30%, notes with concern that the unemployment among Roma, which is more than double the average rate for society in general points to discriminatory practices in the field of employment.

The Advisory Committee has been informed by Roma representatives that active measures to support employment do not adequately accommodate the needs of Roma or have conditions which have the effect of excluding Roma and putting them in disadvantaged positions compared

to others. In addition, some measures are inadequately planned and implemented, offer few employment possibilities and have consequences for social aid, although no employment has been secured.

The Advisory Committee notes with concern that the housing situation of Roma remains worrying. The living conditions faced by the Roma inhabitants of some settlements, such as the Brest village, 40 kilometres from Skopje, where there is no electricity, no running water, and a lack of roads, are a matter of deep concern.

The authorities have implemented a number of projects to remedy the existing problems and improve the infrastructure in the settlements inhabited mainly by the Roma. The Advisory Committee welcomes the adoption of the Law on the Legalization of Illegal Constructions and the Establishment of a Digital Data Base of the Master and Detailed Urban Plans. These initiatives should significantly improve the legal guarantees and security of tenure within the Roma settlements. The Advisory Committee stresses in this context the necessity for flexible implementation of the Law on the Legalization of Illegal Constructions, within a realistic timeframe and without prohibitive fees being imposed on the applicants.

The Advisory Committee also acknowledges the steps that the authorities have taken to improve the substandard 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 designing urban plans and the reconstruction of streets in some particularly disadvantaged settlements. The Advisory Committee also welcomes the information that detailed urban plans are in the preparatory stage in the municipalities of Prilep and Bitola, where there are large Roma settlements.

The Advisory Committee welcomes the adoption, in 2008, of the Action Plan for the Improvement of the Status of Roma Women, the purpose of which is to include Roma women in all spheres of social life. Nevertheless, the Advisory Committee regrets to note that, according to Roma representatives, the provision of medical services, including gynaecological services in Romani neighbourhoods, remains inadequate.

Recommendations

The Advisory Committee strongly urges the authorities to exert more efforts to prevent, combat and sanction the inequality and discrimination suffered by the Roma. The authorities must step up their efforts, in particular at local level, to improve the education and employment opportunities and living conditions of Roma and to promote their integration into society.

The Advisory Committee recommends that particular attention be paid to improving housing conditions in Roma neighbourhoods. The authorities should ensure that the persons concerned have the possibility to participate effectively in the consultations and decision-making processes regarding such improvements.

The Advisory Committee encourages the authorities to implement the Law on the Legalization of Illegal Constructions in a flexible manner, within a realistic timeframe and without prohibitive fees being imposed on the applicants, with a view to improving the legal guarantees and safeguards of tenure within Roma settlements.

The Advisory Committee further urges the authorities to work actively towards improvement of the status of all Roma women and girls through implementation of the Action Plan for the Improvement of the Status of Roma Women, with associated targets and monitoring.

32. Ukraine

Opinion adopted on 22 March 2012

Article 4 of the Framework Convention

Legislative and institutional framework protecting national minorities

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to facilitate a wider public debate on the Draft Concept for State Ethnic Policy in close co-operation with representatives of national minorities and ensure that relevant legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages were developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards.

Present situation

The Advisory Committee notes with deep concern that no new legislative framework relating to the protection of national minorities has been adopted since the second monitoring cycle, and that the protection of national minorities remains insufficiently regulated by the 1992 Law on National Minorities, which is widely considered outdated and too vague in its provisions. It was informed that neither the preparation of the Draft Concept for State Ethnic Policy, nor previous efforts to amend the Law on National Minorities have advanced. Moreover, governmental and non-governmental observers alike question the likelihood of a swift adoption of any such legislative texts, given the upcoming Parliamentary Elections in October 2012 and the fact that questions relating to minority protection are considered highly sensitive. Hence, the legislative framework in force remains outdated and inconsistent, which results in a gap in legal certainty for persons belonging to national minorities with regard to the enjoyment of their constitutionally guaranteed rights, such as in the areas of education, language, or representation in elected bodies. In addition, the Advisory Committee notes with deep concern that the State Committee on Nationalities and Religions (SCNR), a specialised government body dealing with issues relating to national minorities and religions, was dissolved at the end of 2010 in the context of a broader administrative reshuffle (see comments on Article 15 below).

As regards the restoration of property and land rights of formerly deported persons, the Advisory Committee notes with concern that individual applications are frequently refused with reference to the fact that the 1991 Law on the Rehabilitation of Victims of Political Repression in Ukraine does not apply to the deportations carried out between 1941 and 1944. In addition, terms such as 'indigenous peoples' or 'deported peoples' are mentioned in the Constitution but without giving a definition and without granting clearly defined rights to persons belonging to these groups. The Advisory Committee expects that the Draft Law on the Restoration of Rights of Persons Deported on Ethnic Grounds, submitted to parliament in February of 2010, will be adopted without further delay to remedy this gap. Representatives of the Crimean Tatars submitted, equally in 2010, a Draft Law on the Status of Crimean Tatar People in Ukraine, which was favourably discussed by the

Committee on Human Rights, National Minorities and Inter-ethnic Issues of the Verkhovna Rada but, unfortunately, not yet included in the official agenda of parliament.

Recommendations

The Advisory Committee urges the Ukrainian authorities to renew their efforts to adopt without delay and in close consultation with the groups concerned, an adequate and comprehensive legal framework for the protection of national minorities.

The Advisory Committee further urges the authorities to take all necessary measures to adopt, without delay, an adequate legal framework regarding the restoration of rights of formerly deported peoples.

Legislative and institutional framework for protection against discrimination

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to develop comprehensive anti-discrimination legislation and provide effective remedies against discrimination by public and private entities. It further pointed out that information related to the number and nature of cases of discrimination should be collected to ensure an effective evaluation of the legislative and institutional mechanisms in place.

Present situation

The Advisory Committee notes with concern that comprehensive anti-discrimination legislation has still not been adopted, despite repeated recommendations by international monitoring bodies, including the Advisory Committee. While the Ministry of Justice has developed a 'Strategy for Combating and Counteracting Discrimination' as well as a Draft Presidential Decree to launch that Strategy, the Advisory Committee shares the concerns of civil society representatives that these steps may further delay the adoption of the necessary legislation. The Draft Decree, even if adopted, would not serve to redress the current lack of enforceable guarantees for the protection of discrimination, as it does not cover private relations, nor does it contain a common definition of discrimination, including its direct and indirect dimensions. In addition, a decree will have a lower legal status than the relevant laws that require amendments to establish effective legal remedies against discrimination.

The Advisory Committee is pleased to note that some relevant provisions of the Criminal Code, including Article 161 which prohibits incitement to racial hatred, were amended in 2009, extending the list of offences for which racist motivation is considered an aggravating circumstance, and increasing the maximum sentence for crimes involving racial hatred. However, Article 161, for instance, remains very seldom invoked (see comments on Article 6 below), as it establishes criminal liability only for 'deliberate actions' that incite ethnic hostility, which is very difficult to prove. In addition, this provision is only applicable when the act is directed against a specific person, not against an ethnic group or a people as a whole.

Moreover, following the above-mentioned dissolution of the SCNR, which had been the main institution tasked with coordinating the fight against racism and discrimination, the Inter-Departmental Working Group against Xenophobia and Ethnic and Racial Intolerance was also abolished, and the operational units established within the Ministry of Interior for investigating and combating racially or ethnically based crimes have ceased functioning. The Advisory

Committee notes with deep concern that there is currently no institutional mechanism in place to coordinate the efforts to combat racism and discrimination in Ukraine.

The Advisory Committee notes with interest, however, the concerted efforts by civil society representatives and experts to develop draft comprehensive legislation for the protection against discrimination, containing civil and administrative anti-discrimination provisions and providing for effective mechanisms for enforcement and redress.

Recommendations

The Advisory Committee urges the authorities to adopt without delay comprehensive anti-discrimination legislation covering all fields of life and providing for effective enforcement mechanisms and remedies. The Advisory Committee further recommends that the legislation is prepared in close consultation with relevant civil society representatives, particularly as regards the draft legislation already prepared.

The Advisory Committee further calls on the authorities to establish urgently an institutional mechanism to co-ordinate all efforts to combat racism and to monitor comprehensively and effectively all manifestations of discrimination in society.

Efforts to ensure full and effective equality

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to consider taking resolute measures to redress the situation of persons belonging to disadvantaged national minorities, including through special measures to promote their full and effective equality. Obstacles faced in particular by Roma in their access to social rights had to be eliminated. In addition, the Advisory Committee encouraged the authorities to provide law enforcement officials and the judiciary with relevant human rights training.

Present situation

The Advisory Committee welcomes efforts by regional and state authorities, in particular in the Odessa and Transcarpathia regions, to promote the effective equality of persons belonging to disadvantaged groups, such as the Roma. It notes, however, that these efforts are reportedly of an ad hoc nature and lack the consistency and depth required to result in sustainable changes. Roma representatives have repeatedly underlined the need for a comprehensive national Action Plan to be adopted, so far without success. While efforts have been made, for instance, to issue birth certificates and other identity documents to persons belonging to Roma communities, the Advisory Committee received worrying reports that a significant part of the Roma population, in some areas of the Transcarpathia region, is still without the necessary identity documents which prevents their access to a number of important social rights. In addition, the Advisory Committee learned that prejudice against and stereotypes of the Roma people still prevail in Ukrainian society and result in disadvantages and lack of equality in a number of areas, including education, provision of health services, and employment (see comments on Articles 6, 12 and 15 below). In addition, the Advisory Committee is deeply concerned about continued reports of sub-standard living conditions for many Roma.

In addition, the Advisory Committee is deeply concerned by continued reports of targeted fingerprinting of persons belonging to Roma communities, which is still carried out in the context

of settlement 'raids', conducted reportedly often with excessive use of force (see comments on Article 6 below). The Advisory Committee further heard disconcerting reports about unequal treatment of Roma by law enforcement bodies and within the justice system, where Roma are reportedly identified and treated as suspects even if they are witnesses or themselves victims of a crime. This is incompatible with Article 4 of the Framework Convention. It was alarmed by reports of 'collective punishment' in, for instance, Lviv where, on 14 February 2012, a whole family appears to have been taken into custody in connection with an investigation into a crime allegedly committed by the father.

The Advisory Committee further notes that substantial efforts have been made to promote the integration of Crimean Tatars, returning from Uzbekistan and other countries, including in the areas of housing, infrastructure and education. Nevertheless, the Advisory Committee learned from governmental and non-governmental representatives alike that the results are far from sufficient in meeting the needs of the approximately 280,000 persons who have returned. The Advisory Committee is deeply concerned that the living conditions in many of the settlements continue to be sub-standard, with limited access to water and electricity, and often no paved roads. The situation is particularly unsatisfactory in the unauthorised settlements where a large number of Crimean Tatars continue to live. In addition, many of the inhabitants of legalised settlements still face problems regarding the formulation and processing of their land titles, even though they have lived there for 20 years.

Given the particular disadvantages faced by specific groups in Ukraine, such as the Roma and Crimean Tatars, the Advisory Committee deeply regrets that no comprehensive and special measures are in place to address these inequalities. It notes with deep concern, for instance, that draft legislation related to the Crimean Tatar population has not progressed because of the official argument that it would constitute the granting of special rights to them as people deported on ethnic grounds, which would not be permissible under Article 24 of the Constitution. The Advisory Committee heard similar views expressed by regional authorities with regard to the inequalities suffered by Roma. The Advisory Committee reiterates its view that such an understanding of special measures for disadvantaged minority groups is not in line with the principles of Article 4.2 and Article 4.3 of the Framework Convention and does not take into account the undertaking by States Parties in this article to adopt, where necessary, adequate measures to promote full and effective equality.

In this context and given the particular complexity and cost of ensuring the integration of the large Crimean Tatar population, the Advisory Committee notes proposals to convene an International Forum related to the situation of the Crimean Tatars, with the aim of attracting international funding and assistance for the sustainable promotion of their full and effective equality. The Advisory Committee strongly welcomes this initiative as an opportunity to promote effectively the equality of the Crimean Tatars, including by agreeing a roadmap of concrete measures in the areas of land restitution and legalisation, housing, schools, and adequate infrastructure. At the same time, the Advisory Committee points out that international support cannot substitute the responsibility of the state to devise and implement relevant policies.

Recommendations

The Advisory Committee urges the authorities to adopt, with international support where appropriate, comprehensive strategies containing special positive measures to promote the full

and effective equality of formerly deported persons, such as the Crimean Tatars, in line with Article 4 of the Framework Convention.

In addition, the Advisory Committee urges the authorities to adopt without further delay a comprehensive national action plan for promoting the full and effective equality of Roma in all areas, including as regards the issuance of identity documents in order to ensure adequate access to public services.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to reinforce efforts to obtain relevant statistical data on the situation of persons belonging to national minorities, in particular those belonging to disadvantaged minorities. Ethnic data had to be collected in close co-operation with national minority representatives and with full respect for the personal data protection safeguards.

Present situation

The Advisory Committee regrets that no progress has been made regarding the collection of up-to-date and accurate data on the number and situation of persons belonging to national minorities. While the Ministry of Social Policy is gathering disaggregated data on the age and gender of beneficiaries, data on ethnic background is still not being processed in any of the surveys. Such a collection, however, would provide the authorities with indispensable information for the development of targeted policies to promote the effective equality of the most disadvantaged groups. In the absence of any such official data collection, the Advisory Committee regrets that alternative information, gathered by civil society and independent research, seems not to be used by the authorities as a means of monitoring access to rights and benefits of the most disadvantaged sectors of the population. The Advisory Committee reiterates its view that an accurate understanding of the situation and access to rights of relevant groups is crucial for the development, implementation and evaluation of any policy aimed at promoting full and effective equality. This information should be gathered in close consultation with representatives of the groups concerned and in full respect of relevant international data protection standards.

Recommendation

The Advisory Committee reiterates its strong recommendation to the authorities to develop mechanisms for the regular collection of updated information on the number of persons belonging to national minorities, as well as on their situation as regards access to rights. Data from different sources should be evaluated and processed, such as that obtained through household and labour force surveys, as well as independent research, in line with relevant personal data protection standards and in close consultation with minority representatives.

33. United Kingdom

Opinion adopted on 30 June 2011

Article 4 of the Framework Convention

Legislative and institutional developments in anti-discrimination in Great-Britain

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee welcomed adoption of the Equality Act in 2006, as well as the initiation of a Discrimination Law Review with a view to creating a more simplified and coherent framework for the protection against discrimination. However, concerns were also expressed about the resources and support given to combating discrimination in the context of the newly established Equality and Human Rights Commission.

Present situation

The Advisory Committee welcomes the adoption by the Government of the United Kingdom of the Equality Act (2010) on 6 April 2010. This Act harmonises and replaces many previous strands of anti-discrimination legislation, simplifying and strengthening protections and establishing a comprehensive, cross-cutting legislative framework, addressing a number of inconsistencies in anti-discrimination legislation identified previously by the Advisory Committee and the European Commission against Racism and Intolerance. The Advisory Committee warmly welcomes the positive action provisions in the new Equality Act. These provisions allow proportionate action to be taken to encourage or enable persons with protected characteristics to overcome a disadvantage for reasons connected to that protected characteristic.

The Advisory Committee also considers that the inclusion of a multiple discrimination provision in the Act is a significant development. Whereas the Government has postponed enactment of this provision pending further consideration, the Advisory Committee notes with satisfaction that the Employment Appeals Tribunal expressed the view that employees are protected from multiple discrimination by the existing legislation.

The Advisory Committee also considers as a significant positive development the new public sector equality duty contained in the Equality Act. Public bodies (and private bodies with respect to any public functions they may carry out) will now be legally obliged to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. The Advisory Committee expects that the authorities will consider measures to ensure the implementation of this part of the Equality Act in the near future.

Considering the major role played by the Equality and Human Rights Commission (EHRC) and the fact that it embodies the multidimensionality of discrimination and the intersection between equality and human rights, the Advisory Committee deeply regrets the sweeping cuts imposed on the EHRC, noting that its budget will have diminished by 68% by 2015 and that staffing levels will be reduced from 460 to 200 within 12 months. The Advisory Committee is concerned that such drastic cuts could severely undermine the ability of the EHRC to carry out its task effectively and independently.

Recommendations

The Advisory Committee encourages the authorities to promote a full and effective implementation of the new Equality Act, as well as monitoring of its implementation.

The Advisory Committee calls on the authorities to consider carefully the scale and impact of the proposed cuts on the Equality and Human Rights Commission and urges them to ensure that the Commission has all necessary resources to carry out its functions effectively and independently.

Efforts to ensure full and effective equality

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee observed developments such as the adoption of Race Equality Schemes across the UK. Nevertheless, persons belonging to minority ethnic communities continued to face considerable inequalities in the fields of health and employment.

Present situation

The Advisory Committee welcomes the continued efforts of the authorities to promote equality in all areas of life, including employment, education, housing and access to health care (see remarks under Article 15 below), through comprehensive strategies, such as the Racial Equality Strategy in Northern Ireland, the strategy to tackle racial inequalities in England and Wales and the Fund for Tackling Race Inequalities set up to implement this strategy, as well as the Race Equality Scheme for 2008-2011 in Scotland. The Advisory Committee expects that the authorities will continue to allocate sufficient funding for the implementation of these strategies. Furthermore, monitoring of their impact and monitoring of equality in various areas of life is well advanced in the United Kingdom, although there remain inconsistencies and lack of data in some areas. Therefore, the Advisory Committee is pleased to learn that the Government and the devolved administrations continue to work on ways to improve and complement data collection.

The Advisory Committee notes with concern that recently arrived migrants and asylum-seekers belonging to minority ethnic communities, including Roma, frequently face destitution and substandard accommodation, even homelessness. Many of them have limited access to social support in case of unemployment. Information brought to the attention of the Advisory Committee indicates that some Roma migrants in particular do not have access to social services due to a lack of familiarity with the system in place and reluctance to approach the authorities. Migrant women whose situation depends on the status of their husband are particularly vulnerable to poverty. While acknowledging that the authorities have made efforts to tackle these problems, particularly in Scotland where asylum-seekers still have access to support upon arrival, the Advisory Committee deplores the recent cuts in provision of support to asylum-seekers in England, Wales and Northern Ireland. The Advisory Committee believes that the authorities should consider adopting measures to address the situation of migrants who slip through the social protection net and avoid cases of destitution and homelessness.

Difficulties faced by Gypsies and Travellers throughout the United Kingdom in the areas of employment, education (see remarks under Article 12 below), health care (see remarks under Article 15 below) and accommodation (see remarks under Article 5 below) are also a source of concern for the Advisory Committee. While commending the efforts undertaken and results achieved by the authorities in this field, the Advisory Committee is concerned by the argument sometimes put forward by the authorities that taking specific measures to improve the situation of Gypsies and Travellers, particularly in the field of housing, discriminates against persons belonging to the majority population (see also remarks under Article 5 below). The Advisory Committee appreciates that, in the case of Dale Farm, the local authorities and politicians have followed a

twin-track approach, seeking to enforce the law while pursuing dialogue in consultation with representatives of local Travellers in order to avoid forced eviction. However, the authorities also informed the Advisory Committee that equality under the law of the United Kingdom is to be understood as formal equality before the law, and not as providing additional rights for minorities. The Advisory Committee reiterates its view that such an understanding of special measures for disadvantaged minority groups is not in line with the principles of Article 4.2 and Article 4.3 of the Framework Convention and does not take into account the undertaking by States Parties in this article to adopt, where necessary, adequate measures to promote full and effective equality.

In the context of the current financial climate, the Ministry of Justice launched a consultation on a possible reform of legal aid provision in England and Wales. While the proposal to retain discrimination cases within the scope of legal aid is to be welcomed, the Advisory Committee is concerned by the proposal to withdraw support for legal representation in a number of instances, such as before the Employment Tribunal and the Special Education Needs and Discrimination Tribunal, and in a number of issues relating to immigration such as for the granting of leave to remain, entry clearance, citizenship and travel documents and issues of family or private life. This could have an overwhelmingly disproportionate impact on persons belonging to some minority ethnic communities, particularly migrants and Roma, Gypsies and Travellers.

Recommendations

The Advisory Committee encourages the authorities to continue implementing strategies to promote equality in all areas of life and on all characteristics relating to minority ethnic communities protected under the Equality Act, and to allocate sufficient financial support for their implementation. The authorities should also continue to monitor carefully equality outcomes, in close consultation with representatives of minority groups and in full respect of international standards in the field of personal data collection.

The authorities should raise awareness in society that developing special measures to improve the situation of persons belonging to disadvantaged minority groups, such as Gypsies and Travellers, should not be considered as discriminating against the majority population, in line with Article 4.2 and Article 4.3 of the Framework Convention.

The Advisory Committee urges the Government to give serious consideration to the possible impact on persons belonging to minority ethnic communities, including Gypsies, Travellers and Roma, of the proposed reforms to legal aid.

The authorities should pay particular attention to the situation of migrants and asylum-seekers belonging to minority ethnic communities and take measures to eliminate destitution and avoid homelessness among these persons.

Anti-discrimination and equality in Northern Ireland

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee noted the inconsistencies between British and Northern Irish legislation that added further complexity in the legislative framework for combating discrimination. In this context, the Advisory Committee welcomed the commitment in the St Andrews Agreement for all parties to work towards rapidly fulfilling longstanding objectives

to adopt a Single Equality Act for Northern Ireland and a possible Bill of Rights for Northern Ireland.

Present situation

Despite the commitment undertaken in the St Andrew's Agreement, no progress has been made towards adopting comprehensive equality legislation for Northern Ireland, which is a source of concern for the Advisory Committee. Existing legislation in Northern Ireland remains complex and piecemeal. Consolidated legislation, such as that adopted in Great-Britain, is needed to put an end to the significant discrepancies and inconsistencies that exist between the different jurisdictions.

The Advisory Committee notes with interest that the Government led a consultation on the possible aims and content of a Bill of Rights for Northern Ireland. However, it understands with regret that no significant progress has been made towards adoption of such a bill.

The Advisory Committee is also concerned about reports regarding the manner in which "Operation Gull", a form of immigration control at Northern Ireland ports and airports and along the border with Ireland on passengers travelling within the Common Travel Area, is being conducted. As the State Report contained no information relating to the implementation of the Framework Convention in Northern Ireland, no detailed statistics are available on the implementation of this programme. Nevertheless, information brought to the attention of the Advisory Committee raises serious concerns of racial profiling targeting in particular persons belonging to some minority groups (see also remarks under Articles 17-18 below).

The Advisory Committee is pleased to note that progress continues to be made in efforts to achieve full and effective equality between Protestants and Catholics in the field of employment in Northern Ireland (see also remarks under Article 3 above). Positive measures to increase participation of persons belonging to the Irish community in the police force have led to a marked improvement of participation of members of that community in the work force in line with Article 4.2 and Article 4.3 of the Framework Convention (see also remarks under Article 15 below).

The Advisory Committee notes with concern that the budget of the Northern Ireland Human Rights Commission (NIHRC) will be cut by 25% from 2013. It should be recalled that the NIHRC is an important part of the institutional architecture of the Belfast (Good Friday) Agreement and that it continues to play a major role in promoting respect for human rights. The NIHRC must therefore have the necessary resources to continue to carry out its tasks effectively.

Recommendations

The Advisory Committee urges the authorities to adopt harmonised, comprehensive anti-discrimination legislation for Northern Ireland in order to put an end to the disparity in protection against discrimination that exists between Northern Ireland and Great-Britain. It also calls on the authorities to resume progress towards adoption of a Bill of Rights, reflecting the particular circumstances of Northern Ireland.

Every effort should be made to ensure that the Northern Ireland Human Rights Commission has the necessary resources to carry out its duties effectively and independently.

The authorities should review the manner in which immigration controls are carried out in ports, airports and along the border with Ireland, so as to avoid any racial profiling of persons belonging to some minority groups.