

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

COUNCIL OF EUROPE



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**Comments of the Government of Montenegro on the Third Opinion of the Advisory Committee on  
the implementation of the Framework Convention for the Protection of National Minorities by  
Montenegro**

received on 31 July 2019



MONTENEGRO  
Ministry of  
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**COMMENTS ON THE THIRD OPINION OF THE ADVISORY COMMITTEE ON THE  
FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

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The Ministry of Human and Minority Rights, as the coordinating institution for drafting the Third Report regarding the Implementation of the Framework Convention for the Protection of National Minorities, welcomes the opinion delivered by the Advisory Committee and looks forward to the constructive spirit of cooperation we have had over the past period, in particular in the eve of preparation of the Third Opinion regarding the implementation of the Framework Convention for the Protection of National Minorities.

Montenegro recognises the work of the Committee on the Framework Convention for the Protection of National Minorities as well as of the Committee of Experts of the European Charter for Regional or Minority Languages, since the recommendations of this body are certainly one of the mechanisms for improving the situation in this area on the field.

Respect for and improvement of the human rights area, especially of the rights of minorities, is a continuous process for us, to which we will be devoted also in the future and we look forward to the continuation of constructive dialogue and remain open for cooperation with the Committee on the Framework Convention for the Protection of National Minorities and other bodies of the Council of Europe.

Below are some corrections and comments from the institutions on the Third Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities:

#### **11. (Ministry of Human and Minority Rights)**

The Law on the Prohibition of Discrimination, among other grounds of discrimination, recognises "relation with a minority nation or minority national community" even in Article 2 as well as in other areas governed by this Law. It can therefore be concluded that discrimination of minority nations and minority national communities is recognised through this Law and sanctioned in all areas that it regulates.

#### **36. (Ministry of Justice)**

Article 42a of the Criminal Code of Montenegro - Special circumstance for sentencing in a case of criminal offence committed out of hatred - is amended by the Law on Amendments to the CCMN (Official Gazette of Montenegro, No. 44/17).

#### **47.a) (Ministry of Interior)**

With reference to paragraphs 47 and 48 of the document, we point out that the above mentioned paragraphs are contradictory because the paragraph 47 relates to citizens of the Republic of Serbia, while the recommendation from paragraph 48 refers to stateless persons.

#### **b) (Ministry of Interior)**

We believe that these persons cannot be exposed to the risk of statelessness, because as stated in paragraph 47 these persons have problems in obtaining travel documents of the Republic of Serbia and as well as stated they have citizenship of the Republic of Serbia, therefore Montenegro has no possibility to influence and to interfere with the procedures prescribed for issuing and obtaining travel documents in another country. According to the Law on Aliens (Official Gazette of Montenegro, No. 12/18 and 3/19), in order for an alien to

achieve one of the existing types of residence in Montenegro (temporary or permanent residence), it must, among other evidence, possess a valid travel document of the country of origin.

Accordingly, for persons born in the republics of the former FPRY, SFRY, FRY and SMN there is no possibility of becoming stateless persons or for their children not to acquire citizenship by the origin of their parents, according to legislation on citizenship of the republics, i.e. federal citizenship that was in effect at that time.

As regards the conditions for acquiring Montenegrin citizenship, they are prescribed by the Law on Montenegrin Citizenship (Official Gazette of Montenegro, No. 13/08, 40/10, 28/11, 46/11 and 20/14) and apply without exception to all applicants for the acquisition of Montenegrin citizenship on some of the prescribed grounds, it excludes discrimination on any ground (sex, religion, race, colour of skin or national or ethnic origin), with the embedded principle that statelessness should be avoided. Also, this Law provides for equality among citizens of Montenegro, regardless of whether they acquired Montenegrin citizenship by origin or admission.

#### **48. (Ministry of Interior)**

In paragraph 48, the Advisory Committee urges the authorities to find a solution, including diplomatic channels, in order to secure for persons without a citizenship an adequate legal status that would allow them to access their rights.

In connection with this paragraph, we point out that the determination of the status and issuance of a travel document for stateless persons are regulated by the provisions of Articles 59 and 60 of the Law on Aliens, stipulating that persons for which, in the conducted process, is determined that are stateless persons, the Ministry of Interior shall issue a *travel document for a person without citizenship* on a personal request with a validity of one year.

On the basis of an issued travel document, to a person without citizenship, a temporary residence permit may be issued if he/she has the means of support, accommodation and health insurance and is not subject to the ban on entry and residence in Montenegro provided that he/she was residing in Montenegro at least three years prior to the submission of the request and that he/she intends to continue his/her residence in Montenegro. Please note that after five years of temporary residence, an alien is entitled to a permanent residence.

#### **59. (Ministry of Interior)**

Out of the total of 145 persons identified by UNHCR as persons at risk of statelessness, we would like to inform you that in the meantime it has been established that 50 persons possess a citizenship of another country, that one person has died, that to one person has been issued a travel document for persons without citizenship, for one person the procedure for issuing a travel document for persons without citizenship is in progress, for two persons the procedure for admitting in the Montenegrin citizenship is underway, that for 12 persons an out-of-court procedure was initiated for determining the place and date of birth in the territory of Montenegro, for 10 persons the entry in the registers of births in the country of their origin is necessary in order for them to submit the requests for admission to the Montenegrin

citizenship (one of the parents is a Montenegrin citizen), for 11 persons it is necessary to initiate the procedure for entry in the Registry of citizens of the Republic of Serbia/Republic of Kosovo (one of the parents is a citizen of that state), that 13 persons are on the list of the Ministry of Interior of Kosovo mobile team and that for 45 persons it is necessary to initiate an out-of-court procedure for determining the place and time of birth in Montenegro.

## **62. (Ministry of Interior)**

Please note that for 56 persons from the mentioned list the Ministry of Interior has initiated a field check procedure to determine if they are in Montenegro, where after the field check procedure is over they will be able to familiarise themselves on how to resolve their status and in connection with this, in accordance with the applicable material regulations, to submit appropriate requests.

Bearing in mind the above, given that UNHCR through the Legal Centre deals with fieldwork and with assisting these persons to submit a request for subsequent entry into the register of births, we invite them to identify these persons.

The Ministry of Interior is committed to providing assistance in addressing the status issues of citizens in each specific situation identified, especially when it comes to subsequent entry in the register of births.

## **65. (Fund for the Protection and Exercise of Minority Rights)**

The Fund was re-established in 2017 (by Amendments to the Law on Minority Rights and Freedoms), it is funded from the budget of Montenegro with at least 0.15% of the current budget (about EUR one million) and from other sources, in accordance with the law.

In the most of the cases, the Fund was announcing public competitions twice a year, until the new rules on the management and operation of the Fund prescribed the number of annual public calls for applications.

The Evaluation Commission, composed of seven independent experts nominated by the Parliament of Montenegro, determines for these applications the fulfilment of the conditions set by the public competition, evaluates, determines the rank list and establishes a proposal for allocation of funds on the basis of which the Director of the Fund makes a decision on financing.

## **66. (Fund for the Protection and Exercise of Minority Rights)**

Serbian minority is granted the most resources, Muslim, Bosniak, Albania and Croatia minorities got between 10% and 17% of the resources each, and Roma minority received 10% in both cycles.

Intercultural projects received around 36% of the funds, which is a significant increase since 2017 when they received about 4%. Projects related to the Muslim and Albanian minorities got about 3% and 9% of the funds, and the Serbian minority received the least. Roma minority projects received about 8% of available funds, and the Croatian minority 11%.

Footnote No. 56

Serbs around one third or EUR 292,000. Roma approximately EUR 97,500. Croation approximately EUR 97,000

Footnote No. 57

Muslim, Albanian, Bosniak approximately EUR 125,000 to 170,000 (Muslim around EUR 126,000, Albanian around EUR 157,000, Bosniak around EUR 168,000)

Footnote No. 58

Roma: EUR 97,400 or 10%

Footnote No. 59

Bosniak: 28% or around EUR 212,000.

Footnote No. 60

Intercultural projects 2018: approximately EUR 273,000; 2017: approximately EUR 36,000.

Footnote No. 61

Serbs: 5% or around EUR 39,000.

Footnote No. 62

Roma: around EUR 57,000; Croats: around EUR 83,000.

**68. (Fund for the Protection and Exercise of Minority Rights)**

In 2018, the Fund distributed around EUR 755,000 (the funds allocated for financing projects amounted to around EUR 983,000, the difference was returned to the budget of Montenegro because the Evaluation Commission estimated that insufficient number of projects (of those that met the formal legal requirements) deserved, by quality, to be financially supported, and were rejected with insufficient number of points. The average amount of financial support from the Fund for projects in 2018 is EUR 7,800). In 2018, around EUR 755,000 was distributed by the Fund.

**75. (Fund for the Protection and Realization of Minority Rights)**

In conjunction with paragraph 75, paragraph 188 and recommendation no. 4, where it is stated that project reports and evaluations should be made available to the public, please be informed that as of the end of 2015, at <http://www.fzm.me/v/index.php/izvjestaji>, can be found data on the success of project implementation and evaluation of narrative and financial reports, for all users of Fund assets since its foundation.

**86. (Ministry of Culture)**

The draft of the new Media Law and the Law on Audiovisual Media Services have included these recommendations and the monitoring and sanctioning authority is given to the independent regulator the Agency for Electronic Media. As far as printed media are concerned, hate speech is under the authority of self-regulatory bodies that follow the code of journalists.

#### **94 – 97 (Ministry of Human and Minority Rights)**

At its 121st session, held on 16 May, the Government established the Proposal Law on Freedom of Religion or Belief and the Legal Status of Religious Communities. It is a very important legal act that identifies important issues of cultural identity of the citizens of Montenegro.

For every citizen of Montenegro it guarantees the freedom to belong or not to belong to a religious community, it determines the state's ownership of the cultural treasure that the state has been acquiring and building for centuries, and ensures that the law is equally valid for all religious communities.

The Proposal Law, established by the Government on 16 May, is harmonised with the highest international standards, beginning with the United Nations conventions in this area, through the European Convention on Human Rights with the caselaw of the European Court of Human Rights, up to the Venice Commission and OSCE/ODIHR Guidelines from 2004 and 2014.

It is a very liberal law that provides the highest degree of freedom of thought, conscience and religion and a significantly higher level of rights and freedoms than any such law in our neighbourhood.

With this Law the state guarantees the right of every citizen of Montenegro to, in its own conscience, belong or not to belong to a certain religious community. Thus, the state equally protects those who are believers, giving them wide freedom to exercise their right to religion, and those who are not believers, to which is also guaranteed the right not to be believers. It is clear from this Law that in civic Montenegro there is no state religion.

This regulation for the first time in Montenegro regulates a number of important issues. One of these issues is the area of application of the Law. The Law clearly establishes the reach of the rights and obligations of religious communities. It will, therefore, not be possible for any religious community to function and enjoy the rights in the territory of Montenegro while remaining outside the scope of the Law of the state of Montenegro.

Also, the registration procedure, i.e. the records of religious communities, is regulated. The international legal standard requires the state to allow religious activities even to religious communities that are not registered.

That is why, on the free will of a religious community will depend whether it will be registered or not. However, a religious community that does not want to be registered while all the opportunities to do so are given to it, will not have the same status as those religious communities that are registered by freely expressed will. Thus, unregistered religious

communities may also operate, but tax exemptions on such unregistered communities cannot be applied.

Then, this law solves the issue of state property in a clear and transparent way. All religious objects that were the property of the state of Montenegro before losing its independence and joining the Kingdom of Serbs, Croats and Slovenes in 1918, and later did not pass into the property of a religious community in a proper legal manner, will be recognised as the state property. However, if a religious community has evidence that it has become the owner of a property on the grounds of former or current legislation, the state will acknowledge and respect that. Where no such evidence exists, but it is the property created and acquired by the state of Montenegro and represents the cultural heritage of all its citizens, such property as a cultural treasure will be entered as the state property of Montenegro.

Finally, the Law regulates the issue of religious education. Religious communities will be able to establish schools of all levels of education, except the primary schools. The Government considers that at this level, children of 6 years should not be divided, that all children need to follow the same curriculum in state schools, starting with the fact that primary school is mandatory under the Constitution and law, so the obligation of the state as a legislator is to regulate this issue in this way. The Government did not even agree with the request to introduce religious education in state schools. Religion teaching is free, it is free to study religion at all levels, but the Government's view is that state schools should not be a place to do it. Even those countries from our neighbourhood who have tried to introduce religious education in state schools did not have much success and can not say that this experience has improved the quality of public education or social unity, tolerance and harmony. This in no way restricts the right of parents to educate their children in accordance with their religious or other beliefs.

Therefore, by establishing the Proposal of this legislative text, the Government fulfils its constitutional and international legal, and in one sense also historical obligation, to regulate the issues of freedom of religion in Montenegro by modern law, at the highest international standards.

This Proposal law guarantees every citizen of Montenegro the freedom to be or not to be a believer of any religion, according to its own conscience, while it allows the state to protect property and cultural heritage belonging to all citizens and ensure that the laws of Montenegro equally apply to all, throughout the territory of our country.

Given the importance of this legal document, which defines the significant issue of the cultural identity of Montenegrin citizens and its alignment with the highest international standards, the Ministry of Human and Minority Rights has invited members of the Venice Commission to visit Montenegro.

The visit of the Venice Commission to Montenegro was an opportunity to present the Proposal Law and exchange views on this subject with relevant interlocutors. Also, the Ministry has called on the Venice Commission to deliver an opinion on the Proposal Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities, which the Venice Commission has done.



Adoption of the Venice Commission's opinion at its 119th Plenary session, held on 21 and 22 June 2019, is only the first step in the procedure for adoption of the Proposal Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities in the Parliament of Montenegro.

**102. (Ministry of Culture)**

The Draft Media Law establishes a Fund for pluralism and diversity of media. Both commercial and non-profit media will have the access to the Fund. assets will be allocated through project financing and are intended for public services i.e. contents of public interest in these media.

**103. (Ministry of Culture)**

Sustainability of public services is defined by the current law on electronic media, which stipulates that the founders of public broadcasters - local self-governments, shall contractually finance public service of public broadcasters. Among these services, the contents in minority languages are mandatory.

**105. (Ministry of Culture)**

In the Draft Media Law, provisions relating to correction and response have been broadened in line with CoE's recommendations and Montenegrin media sector analysis (JUFREX). It is also envisaged that credible self-regulatory bodies are financed from the Fund for pluralism and diversity of media, thereby ensuring their sustainability, to ensure compliance with standards.