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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 (4th 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 18 September 2017, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted a total of 24 opinions, of which 17 on Article 4, of which 17 are public.

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.

Armenia

Adopted on 26 May 2016

Article 4 of the Framework Convention

Institutional and legal developments in the area of discrimination

The Advisory Committee notes that representatives of national minorities and civil society organisations concur that persons belonging to national minorities do not experience discrimination and are generally treated fairly in economic, social, political and cultural life. Interlocutors of the Advisory Committee reiterated on a number of occasions that difficulties and challenges experienced by persons belonging to national minorities are the same as those experienced by those of the majority and are primarily due to the difficult socio-economic situation that has caused large-scale emigration from the country.

The Advisory Committee notes in this context that, building on the experience gathered during earlier, unsuccessful attempts to adopt an anti-discrimination law, the authorities are currently drafting, in collaboration with key civil society partners, a law on the prohibition of discrimination. Civil society interlocutors have indicated to the Advisory Committee their satisfaction with both the process and the content of the draft text, which according to them reflects European standards, in particular the EU directives on non-discrimination and relevant European Commission against Racism and Intolerance (ECRI) general policy recommendations.

The Advisory Committee notes that according to its interlocutors the draft text contains definitions of direct and indirect forms of discrimination and provides effective remedies against discrimination by public and private entities. It also notes that it is envisaged that the Law on the Prohibition of Discrimination will entrust the Human Rights Defender (ombudsperson) with new functions and powers. With that objective in mind, the authorities are planning to review and amend the Law on the Human Rights Defender at an early opportunity.

The Advisory Committee notes in this context that the authorities maintain their support for the activities of the Office of the Human Rights Defender, which seems to continue to enjoy the confidence of the public. The defender's annual reports to the National Assembly are an important mechanism for raising human rights awareness at the highest levels of the state's structures. For example, in 2012, the last annual report available in English containing a detailed list of complaints indicates that 2 420 applications were lodged with the defender, which constituted a 39% increase over the previous year. Of the 660 complaints submitted by persons belonging to vulnerable groups only five were classified as being based on ethnic grounds. In each of these cases the defender considered that the alleged violations of rights were mostly of a common nature and had no connection with the national or ethnic origin of the applicant (for example, housing problems and difficulties encountered in the field of social services).

With regard to promoting equality in the labour field, the authorities are implementing 14 employment programmes through 51 employment centres established for that purpose. The Advisory Committee notes that the main focus of these programmes is combating extreme poverty. Although persons belonging to national minorities are not targeted directly by these programmes, they equally benefit from them.

A national strategy on human rights protection was adopted in the framework of the EU/Armenia Action Plan of the European Neighbourhood Policy on 29 October 2012 followed in March 2014 by the Action Plan to Implement the National Strategy on Human Rights Protection. The Advisory Committee notes that civil society organisations were consulted in the drafting process of the strategy and their input was

taken into consideration. The national strategy established a framework for human rights protection, through the adoption of a number of targeted programmes, including the 2012-2016 Legal and Judicial Strategy, the Social Defence Strategy of 2006-2015 for People with Disabilities, the Strategic Gender Policy Programme for 2011–2015, the 2011-2015 Strategic Action Plan to Combat Gender-Based Violence and the National Programme for the Protection of Children’s Rights for 2013-2016. The action plan enumerated 119 actions to be taken and the expected results, identified the state agency responsible for the implementation of each of them, set up time frames and identified sources of funding. The Advisory Committee notes that none of the programmes addressed national minorities specifically, but that each one, would, if properly implemented, be beneficial to all.

The Advisory Committee notes that civil society organisations have criticised the lack of a detailed roadmap for the achievement of the measures listed in the action plan, insufficient involvement of the civil society, the focus on training programmes for civil servants, the lack of intermediate assessment and monitoring mechanisms, the lack of activities to raise human rights awareness of the general public and the slow implementation of the plan. In this context, the Advisory Committee notes with regret that many of the measures listed by the plan seem not to have been started and also that two years after the launch of the action plan no assessment has been carried out.

Recommendations

The Advisory Committee calls on the authorities to continue to involve civil society in the process of drafting of the Law on the Prohibition of Discrimination and to adopt the law without further delay. The authorities should engage in a comprehensive awareness-raising campaign on the purpose, scope and complaint mechanism of the law.

The Advisory Committee invites the authorities to provide the Office of the Human Rights Defender with appropriate resources, including financial, to allow it to carry out effectively new duties under the Law on the Prohibition of Discrimination and to intensify the monitoring of alleged cases of discrimination.

The Advisory Committee calls on the authorities to redouble their efforts to implement the action plan adopted in the framework of the National Strategy on Human Rights Protection in close consultation with civil society and national minority representatives and to ensure that the objectives are successively attained.

Austria

Adopted on 13 October 2016

Article 4 of the Framework Convention

Legal and institutional framework for the protection from discrimination and the promotion of equal treatment

Present situation

The legislative framework for the protection from discrimination and the promotion of equal access to rights of persons belonging to national minorities overall rests on two pillars. Persons belonging to national minorities are protected by the broad principle of equality that is enshrined in Austria’s legal system, extending to all citizens. In addition to constitutional provisions that include the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, a complex

and multi-tiered legislative and institutional framework for the protection and promotion of equal treatment is in place. However, there is no unambiguous and comprehensive prohibition of all forms of discrimination in the private and public sector. Different pieces of legislation outlaw certain forms of discrimination committed by specific actors at federal and regional levels in certain spheres, such as those related to the working environment or the supply of goods and services, and many entities have been established to which related complaints can be submitted. Persons who regard themselves as victims of discrimination thus have a wide variety of possible avenues to seek remedy. The Advisory Committee was able to meet representatives from various federal and regional entities concerned, and was reassured by their professionalism and dedication. The Advisory Committee further notes that the number of complaints received by the various institutions is increasing continuously, which is widely interpreted as a sign that the different efforts made to raise awareness and understanding of the available legal remedies amongst the public have been successful.

Overall, however, the number of complaints has remained low. Many individuals, according to minority and civil society representatives, are still discouraged by the complexity of the system and the resulting lack of transparency. Moreover, there is a sense that the effort to seek redress will likely not be rewarded. The Advisory Committee notes that the effectiveness of the Equal Treatment Commission and Equal Treatment Ombudsperson is limited by the fact that these bodies can only establish that discrimination took place and make non-binding recommendations. They cannot, however, award compensation or damages, or impose penalties. Compensation can only be sought before the courts. Here the financial risk of the often lengthy proceedings is carried by the litigants and, given the complexity of the legislation, even lawyers may have difficulties in identifying the correct legal basis and the most convincing argument, for instance in cases of multiple discrimination. The Advisory Committee is therefore pleased to note the intention of the Ombudsperson's Office for Equal Treatment to seek the mandate of addressing the courts itself, including by way of representing the alleged victims, with a view to enhancing the effectiveness of the redress mechanism for the persons affected.

The Advisory Committee further notes the intention of the authorities to produce guidelines offering an overview of the various institutions responsible for the protection from discrimination. These guidelines are intended to form part of the first National Action Plan for Human Rights, which is in the process of preparation and is expected to be adopted in autumn 2016 (see also Article 15). According to governmental and non-governmental interlocutors, the Action Plan, once adopted, is likely to constitute a compilation of already existing initiatives and activities. The Advisory Committee trusts that the announced guidelines, that are intended to facilitate access for the affected individuals to the competent institutions and to increase knowledge about the multiple forms of discrimination that exist, will be made widely accessible through proactive dissemination beyond their mere inclusion in the National Human Rights Action Plan.

The Advisory Committee welcomes efforts made by the Equal Treatment Ombudsperson to increase awareness of anti-discrimination standards in particular amongst possible actors of discrimination, such as large companies and enterprises, in order to prevent such incidents from occurring in the first place. While some progress has been made and understanding has grown, for instance, regarding the fact that job or housing advertisements must not contain discriminatory language, discriminatory attitudes against some persons belonging to national minorities have not diminished. According to reports of civil society and minority representatives, they remain rather widespread, particularly in the education and employment spheres (see also Article 12 and 15) and are particularly directed at the Roma. The Advisory Committee is concerned by reports that Roma continue not to be taken seriously when reporting

instances of alleged discrimination but are informed by relevant officials that such attitudes are common-place and thus not discriminatory.

Recommendations

The Advisory Committee calls on the authorities to increase the support for the activities of and co-operation between the various entities responsible for the promotion of equality at federal and regional level, and to proactively raise awareness among relevant actors and society as a whole of the applicable anti-discrimination standards and the judicial and administrative remedies available in case of violations.

The Advisory Committee further encourages the authorities to explore all available means to ease access to effective redress mechanisms for the affected individuals, including investing the Ombudsperson for Equal Treatment with the power to provide legal aid and to address the courts on behalf of the victim.

Legal and institutional framework for the promotion of full and effective equality of persons
belonging to national minorities

Present situation

In addition to the generally available mechanisms for the promotion of equal access to rights, persons belonging to national minorities benefit from special provisions that are intended to increase their access to rights. The Advisory Committee notes with concern in this regard that access to rights of persons belonging to national minorities is made dependent upon strict territorial limitations that result in unequal levels of enjoyment in the various regions. It underlines the fact that the individual rights of persons belonging to national minorities, in line with Article 4 of the Framework Convention, must be made accessible in order to promote the individual's full and effective equality vis-à-vis persons belonging to the majority. Minority rights are human rights in line with Article 1 of the Framework Convention and are not special entitlements granted only within certain regions or upon a specific decision of the relevant government entities. Such an approach would undermine the general principles of transparency and legal certainty in accessing rights. The Advisory Committee is deeply concerned by the fact that the amendment of the National Minorities Act in 2011 in effect resulted in a further deterioration of the situation of persons belonging to national minorities as their access to individual rights contained in the Framework Convention has been limited to certain localities, without a possibility to challenge this decision through an effective legal remedy (see also Articles 10 and 11). The Advisory Committee considers this inability to contest the denial of access to a minority right in court a violation of the rights of equality before the law of persons belonging to national minorities and of equal protection of the law, as prescribed in Article 4(1) of the Framework Convention.

With respect to the full and effective equality of the Roma, the Advisory Committee notes that in early 2012 Austria submitted a description to the European Commission of the various activities, projects and policies related to the Roma. The document was developed in consultation with Roma and civil society representatives and constitutes a compilation of important activities, often non-governmental, without, however, establishing target goals or indicators for improvement of the situation. Nevertheless, the document is referred to as the Roma Strategy and was followed up with a progress report in 2013. A Roma Dialogue Platform, consisting of representatives of both the federal government and civil society, was established in 2012 to monitor the implementation of the strategy. Civil society representatives welcome the existence of a government entity responsible for all questions related to the integration of the Roma within the EU Framework and the organisation of regular meetings. However, they consider

that there have been few results in the past four years since the Dialogue Platform was established, as the office is still mainly occupied with stocktaking rather than the formulation of clear goals and target indicators. The Advisory Committee was informed by the relevant officials that, indeed, the development of clear indicators was not planned within the ongoing update of the strategy, as civil society organisations were unwilling to share the names and addresses of individual beneficiaries of their respective project activities. The Advisory Committee considers that such personal data should by no means be included in a publicly available strategic document.

The Advisory Committee reiterates, however, that special measures to promote the equality of the Roma in the areas of education, employment, health and housing can only be effective if they are formulated on the basis of a profound understanding of the specific challenges faced by them (see also Articles 12 and 15), particularly because of the heterogeneity of the communities in Austria. Measures should be based on disaggregated equality data that is to be gathered in close co-ordination and consultation with Roma representatives and strictly in line with the right to free self-identification. A comprehensive assessment of the specific challenges faced by the Roma with respect to equal opportunities is equally essential in order to evaluate properly the effectiveness of measures that have already been taken and may require adjustments to maximise their impact.

Recommendations

The Advisory Committee urges the authorities to ensure full and effective equality before the law of all persons belonging to national minorities by guaranteeing access to an effective legal remedy to challenge the denial of access to minority rights.

The Advisory Committee calls on the authorities to proactively step up the implementation of measures aimed at the protection and promotion of effective equality of the Roma, based on a comprehensive understanding of the specific challenges faced by persons belonging to Roma communities and in line with a clear strategic direction and indicators that are developed in close consultation with Roma representatives.

Croatia

Adopted on 18 November 2015

Article 4 of the Framework Convention

Legal and institutional framework for the
promotion of equal access to rights of persons belonging to national minorities

Present situation

The 2002 Constitutional Act on the Rights of National Minorities remains the main piece of legislation in the field of minority rights. Most of its provisions are formulated in general terms and must be put into practice at local or regional (County) level. This continues to lead to significant variations in the level of enjoyment of minority rights in the regions of Croatia. The Advisory Committee observed significant differences in implementation, for instance, in Istria and in Dalmatia. While noting the argument put forward by the authorities that there are diverse levels of demand for access to minority rights across the country, the Advisory Committee is deeply concerned by reports that persons belonging to some minorities are reluctant to draw attention to their specific identity and seek the enjoyment of their

rights, as they fear negative repercussions (see also comments on Articles 10, 11, 14 and 15). In addition, Roma continue to face significant inequalities in accessing rights in a number of spheres (see further comments on Articles 6, 12, and 15). Indeed, awareness of minority rights as part of human rights appears to be rather low in some regions where any discussion related to minorities remains dominated by a war narrative that collectively brands some minorities as “aggressors” who are tolerated at best rather than welcome as integral members of society. The Advisory Committee considers the resulting inequality in the enjoyment of minority rights across Croatia of serious concern and reiterates that the promotion of equal access to rights requires central co-ordination, guidance and strong political will. It cannot be left solely to the political and societal conditions at local level, particularly given that some areas and communities were profoundly affected by the 1991–1995 conflict.

The 2008 Anti-Discrimination Act, which entered into force in January 2009 transposing the EC Equality Directives, continues to provide the legal basis for the protection of persons belonging to national minorities against direct and indirect discrimination on a number of grounds, including racial, ethnic and religious. The Advisory Committee welcomes the continued engagement of the Ombudsperson in her functions as Equality Body. It notes that the Office is increasingly trusted across the country and outreach has been improved, including through the opening of some regional offices. The number of complaints received by the Office significantly increased in 2013 and 2014 which, according to the Office, is due to enhanced awareness among citizens as well as to the economic crisis and an increasingly difficult social situation. Discrimination-based complaints most frequently cite ethnic or national origin as an alleged ground and almost half relate to the employment field. Despite the increasing number of cases, underreporting remains a serious problem, with lack of rights awareness, lack of trust and fear of further victimisation referred to as main reasons. Insufficient access to free legal aid for the most disadvantaged members of society, including many persons belonging to national minorities, also continues to substantially limit the willingness of affected individuals to address the courts, as does the fact that the costs of the other party have to be covered by the plaintiff in the event of a ruling against him or her.

The Advisory Committee notes further that the effectiveness of the Equality Body is limited by the fact that it can only establish that discrimination took place but cannot award damages nor impose penalties. Concerned individuals need to address the courts where they reportedly still face limited understanding of the new antidiscrimination standards, such as related to the reversal of the burden of proof. While welcoming the organisation of some training and awareness-raising activities for the judiciary, among others organised by the Ombudsman Office, the Advisory Committee regrets that not all courts have been co-operating with the Office in providing information on discrimination-related cases, in order to develop a comprehensive understanding of the application of the standards in the various jurisdictions. The Advisory Committee further notes that the Ombudsman Office remains underfunded in terms of both human and financial resources and has repeatedly requested an increase of its budget in line with its various responsibilities. Civil society representatives have criticised that the Equality Body Office is not able to act on all issues of concern and must prioritise those where it considers success most likely. The Advisory Committee welcomes efforts, among others by the Government Office for Human Rights and Rights of National Minorities (GOHRRNM), to more promptly evaluate the level of implementation by the various government structures of the recommendations made by the Ombudsperson in order to enhance their effectiveness and impact on society, including for persons belonging to national minorities.

Recommendations

The Advisory Committee urges the authorities to increase the support for the activities of the Ombudsman Office, in terms of adequate human and financial resources and by promptly implementing the recommendations made by the institution.

It further calls on them to proactively promote the awareness of the antidiscrimination standards through targeted training within the judiciary as well as amongst society at large to encourage affected individuals to apply the legal remedies available to them.

Stateless persons and returnees belonging to national minorities

Present situation

The Advisory Committee notes with concern that access to citizenship remains problematic for long-term residents belonging to national minorities, in particular for Roma but also for members of other national minorities who were displaced by the conflict. According to UNHCR figures of June 2015, there are 2,886 *de jure* and *de facto* stateless persons in Croatia, the majority belonging to Roma communities living mainly in Međimurje County. Lack of identity documents, including birth certificates, continues to block their access to a number of vital rights (see further comments on Articles 12 and 15). While it is welcome that the Ministry of Interior has employed mobile teams to facilitate the issuance of documentation to Roma, including in settlements, the success of these measures is reportedly limited by a lack of consultation with Roma representatives themselves and the fact that the mobile teams rarely have the required language skills or other assets to gain trust within the communities. The Advisory Committee is pleased to note the legal assistance provided by civil society and international organisations, leading to 33 Roma being issued documents in the first six months of 2015. Citizenship was granted in only two cases, however. For most of the undocumented Roma, only temporary residence on a humanitarian basis is accessible, as valid travel documents are required for the issuance of permanent residence or the acquisition of citizenship. It is welcome in this context that efforts are reportedly underway to establish a statelessness determination procedure. Concerned individuals with the status of stateless person may, according to Article 6 of the Foreigners Act, be issued with a valid travel document which may eventually enable them to obtain a long-term resolution of their legal status.

Amendments to the Citizenship Law, in force as of January 2012, have made it somewhat harder for foreigners to obtain citizenship, requiring eight years of uninterrupted residence (extended from five years) and introducing “familiarity with the Croatian culture and social arrangement” as an additional precondition for applicants below 60 years of age. The Advisory Committee notes in particular that persons considered ethnic Croats still enjoy significant advantages when applying for citizenship, having to fulfill only one of the five preconditions contained in Article 8 of the Citizenship Law. They may in particular keep another citizenship when acquiring Croatian nationality, constituting unequal treatment with regard to dual nationality which is not in line with Article 4 of the Framework Convention. As regards the restitution of citizenship for returnees, the Advisory Committee welcomes the fact that Article 94.2 of the amended Foreigners Act establishes access to permanent residence for returnees who can prove that they lived in Croatia on 8 October 1991, thus relieving them from the requirement of eight years of residence. It is concerned, however, by reports of bias in favour of Croats when it comes to the administrative handling of cases where documents were lost or destroyed as a result of the conflict. A significant number of elderly Serb returnees reportedly continue to face challenges when re-establishing their permanent residence because of unavailability of documents and records in

municipal archives, situations which are reported to be easily and non-bureaucratically solved when concerning persons considered ethnic Croats.

Close to 134,000 persons belonging to the Serb minority had been registered as returnees by the end of December 2014. According to a 2012 study on the sustainability of return commissioned by UNHCR, only 48% of the returnees had remained in Croatia, with continued challenges in accessing rights and in particular housing issues indicated as main reasons for departure. The Advisory Committee notes with concern that the housing care programme had significantly slowed down in 2012 with only 177 families obtaining housing in 2012 and only 81 in 2013. It welcomes reports that decision-making processes have accelerated in 2015, following the establishment of the State Office for Reconstruction and Housing Care in May 2013 and the opening of new offices at County level, but notes that approximately 3,900 applications of former Tenancy Rights Holders remain outstanding in July 2015. Beneficiaries obtain apartments at a symbolic rent and also have the right to inherit the tenancy. Despite the security of tenure, many returnees wish to purchase the allocated apartments which, given current market prices, is particularly difficult in the cities. Most persons belonging to national minorities returned only as of 2002/2003 and had access to the housing care programme only as of 2006. They thus feel disadvantaged in comparison to the majority of Croats who returned already in the late 1990s and encountered a much more favourable market. The Advisory Committee welcomes the efforts made by the State Office in co-operation with the UNHCR to facilitate the purchase of allocated apartments in cities at a favourable rate in early 2015, but notes with regret that a draft Government Decision to this effect was not adopted, reportedly because of budgetary constraints. It further notes that approximately 2,500 unsolved reconstruction applications remain outstanding and welcomes assurances by the State Office that an adequate budget for the speedy resolution of these cases has already been made available.

Recommendations

The Advisory Committee calls on the authorities to prioritise the resolution of the legal status of the continuously high number of stateless persons in close consultation with the UNHCR and representatives of affected communities and to ensure that persons belonging to national minorities wishing to acquire Croatian citizenship are not discriminated against based on their ethnicity.

It further calls on them to pursue their efforts to swiftly and completely resolve the remaining applications for housing care and reconstruction assistance, and to ensure that beneficiaries of the housing care programme in cities are provided with a realistic and fair opportunity to purchase the allocated apartments.

Equal access to justice for persons belonging to national minorities

Present situation

Another serious concern with regard to the effective equality of persons belonging to national minorities relates to their access to justice. The Advisory Committee notes in this context that the highest number of complaints received by the Ombudsperson every year concern the judiciary. The concerns of persons belonging to national minorities continue to be linked mainly to objectivity and fairness, in particular as regards the treatment of war crimes committed on both sides. While efforts have been undertaken by the authorities to counter previous perceptions of ethnic bias in the delivery of judgments, service in the “defense of the homeland” is reportedly still considered a mitigating circumstance for war crimes allegedly committed by members of Croatian military formations. The Advisory Committee notes the

information provided by government officials that criminal proceedings have been initiated in 119 cases against members of the Croatian Armed Forces. Yet, it appears that thus far only four criminal proceedings have been initiated with respect to crimes committed during and immediately after Operation Storm in August 1995, despite the fact that the Office of the State Attorney confirmed the number of 167 civilian victims of war. In fact, only in one case was one person convicted at final instance, after twelve years of proceedings, receiving the minimum sentence prescribed by law and benefitting from the merger of two sentences for separate crimes, while defendants were acquitted in another case for lack of evidence. Overall, the handling of war crimes cases is progressing slowly with less than 25% of the 490 crimes recorded by the State Attorney's Office having been resolved fully by June 2013.

The Advisory Committee is particularly concerned by the continued impression among persons belonging to national minorities that their role as victims of war crimes is not adequately acknowledged. It notes with deep concern that during the official commemoration of Operation Storm in August 2015, the celebration of victory was prioritised over the remembrance of the many civilian victims, despite the fact that the International Criminal Tribunal for the former Yugoslavia clearly ruled that "the Croatian military forces and the Special Police committed acts of murder, cruel treatment, inhumane acts, destruction, plunder, persecution, and deportation ... in a widespread and systematic attack against (the) Serb civilian population" of the Krajina region. It is further of concern that most civilian victims of war are still awaiting official recognition of their suffering or any form of compensation. In fact, the majority of civil proceedings initiated before Croatian courts with requests for non-pecuniary damages relating to the killing of family members, were reportedly refused for procedural reasons (often linked to the status of limitations), upon which plaintiffs had to partially cover the sometimes high litigation costs themselves. The Advisory Committee notes a deep sense of inequality experienced by many persons belonging to national minorities given that a special Ministry of Veterans' Affairs was established in 1997, overseeing the implementation of the various laws governing the status and rights of the veterans of the war of 1991-1995, including the provision of a pension, housing and scholarships for the veterans' children. It welcomes in this context the reported intention of the Ministry to prepare a draft Law on the Rights of all Civilian Victims of War, following the recognition in early 2014 of the rights of the victims of sexual violence during the war.

The deep sense of inequality experienced by many persons belonging to national minorities is exacerbated by the persistent underrepresentation of national minorities in the judiciary (see also comments on Article 15). The Advisory Committee considers the disproportionately low numbers of judges belonging to national minorities particularly consequential in terms of equal access to rights and the willingness of persons belonging to national minorities to address the courts. In this context, it notes that 14 cases remain pending in court after many years, entailing disputed claims over unauthorised investments by temporary users and thereby preventing the restitution of property to the rightful owners.

Recommendations

The Advisory Committee urges the authorities to proactively address the inequalities experienced by persons belonging to national minorities with respect to their access to justice. In particular, the recognition of the status and rights of *all* civilian war victims must be accelerated through appropriate legislative steps and based on the principle of equality.

It further calls on them to ensure that the persistent and disproportionate underrepresentation of national minorities in the judiciary is addressed as a matter of priority to ensure that persons belonging to national minorities regain trust in the judiciary and are encouraged to address the courts when experiencing unequal treatment.

Measures to promote the full and effective equality of persons belonging to national minorities

Present situation

Positive measures to improve the status and access to rights of persons belonging to minorities who suffer discrimination are explicitly listed in Article 9(2)2 of the Anti-Discrimination Act as an acceptable exception to the prohibition of discrimination. This is welcome given the significant challenges to the enjoyment of effective equality by persons belonging to national minorities. The Advisory Committee is concerned, however, by the absence of a comprehensive system of collecting disaggregated equality data, in particular at central level. References to the Act on Personal Data Protection still result in important information on the access to rights of persons belonging to disadvantaged groups, which is locally available, to be disregarded at central level, despite the fact that the law explicitly allows for data disaggregation if this is in the public interest, if the individual consents and if the individual is not identifiable. The Advisory Committee considers that a profound understanding of the specific challenges faced by the members of the various groups, based on disaggregated equality data gathered in close co-ordination and consultation with representatives of the groups themselves, is indispensable for positive measures to be effective. A detailed assessment is equally essential to properly evaluate the effectiveness of measures that have already been taken and may require adjustments. The Advisory Committee welcomes in this context that a door-to-door gathering of disaggregated data regarding the living conditions of Roma, both quantitative and qualitative, was conducted in twelve settlements in Međimurje County and that a similar endeavour is expected to be completed by the end of 2015 for four other counties.

The Advisory Committee further notes the National Roma Inclusion Strategy (NRIS) 2013-2020 of 2012, which defines the national priorities towards the socio-economic integration of Roma, in particular related to education (see comments on Article 12), employment, health and housing (see further Article 15). While welcoming the fact that the Strategy refers to the importance of data collection and close monitoring for its effective implementation, as well as the fact that a special Strategy Implementation Monitoring Commission was established in 2013, the Advisory Committee regrets reports from minority representatives and international observers that the Commission has not demonstrated an adequate capacity to monitor and evaluate progress on the ground and that, overall, too little attention has been paid to the actual implementation of measures at local level. According to most observers, it is problematic that central level co-ordination lies with the GOHRRNM which as a technical-level body, and despite its efforts and determination, lacks the authority or the funds to demand co-operation from the various ministries. In addition, it appears that the implementation of EU-funded projects remains scattered among local authorities or civil society organisations that do not always appropriately consult with Roma organisations or promote project management capacity among the Roma communities themselves for more ownership and sustainability of results in the longer term. As regards the Action Plan 2013-2015, the Advisory Committee notes that it widely replicates the NRIS 2013-2020 without specifying in sufficient details how or by when the various measures are to be implemented (see also Article 15).

Recommendations

The Advisory Committee encourages the authorities to clarify that the collection of disaggregated data is in line with international and national personal data protection standards, and to develop appropriate methods for obtaining a comprehensive assessment of the access to rights of persons belonging to national minorities, in consultation with their representatives.

It further calls on them to increase their attention to the effective implementation of the NRIS and corresponding Action Plans by enhancing the co-operation among the various ministries and by allocating the necessary resources to support concrete measures at all levels, in close consultation with Roma representatives.

Cyprus

Adopted on 18 March 2015

Article 4 of the Framework Convention

Legal and institutional framework against discrimination

Present situation

Following adoption of relevant transposition laws in 2004 as well as amendments to the Constitution in 2006 which render EU law directly applicable, the legislative framework in Cyprus is generally considered in line with the EC Equality Directives. No comprehensive review of the domestic legal framework to ensure compliance with the Directives or other relevant international norms, such as those contained in the Convention on the Elimination of all Forms of Racial Discrimination, has been conducted, however, nor have discriminatory laws or provisions been repealed. As awareness of the applicable rights and procedures remains limited among society and the legal profession alike, only very few cases invoke the new provisions and national Courts reportedly continue to consider allegations of discriminatory treatment according to their compatibility with the pre-existing provisions of the Constitution rather than with the now directly applicable EU and international antidiscrimination standards. Against this background, the Advisory Committee regrets that very few steps have reportedly been taken by the authorities in recent years to raise awareness of the applicable antidiscrimination provisions among society and in particular among the judiciary and law enforcement. According to interlocutors of the Advisory Committee, most awareness raising initiatives that have taken place are conducted by civil society organisations as well as by the Ombudsman Office, with funding stemming almost exclusively from the European Commission.

The Ombudsman Office continues to play an active role as both the Antidiscrimination Authority and Equality Body. While the Office enjoys trust among society and is regularly turned to, there appears to be continued confusion as to the various functions it fulfills and the remit of its responsibilities related to discrimination issues. The number of complaints received by the Equality Body and the Antidiscrimination Authority raising discrimination based on ethnic or racial grounds remains low compared with the existing reports of such attitudes displayed in the private and public sectors. In addition to the low awareness of the legal remedies available to possible victims of discrimination, the inhibitive cost of litigation and length of proceedings once lodged remain of deep concern to the Advisory Committee as they deter victims from lodging complaints. According to civil society

representatives engaged in the defence and representation of victims of discrimination, persons belonging to disadvantaged groups who are most exposed to discriminatory treatment, such as the Roma, only very rarely report incidents, as they are often unaware of their rights and the redress mechanisms available to them, lack the necessary financial means, and lack the confidence that taking action may result in a positive outcome for them. The Advisory Committee welcomes in this context the proactive approach taken by the Ombudsman Office in identifying systemic problems and initiating inquiries into possible areas of concern rather than waiting for individual complaints to be lodged. An investigation lodged by the Equality Body into the education situation of Roma children, for instance, resulted in a report in 2011 criticising the non-inclusive approach of the educational system (see further comments on Article 12).

The Advisory Committee deeply regrets the fact that the Ombudsman Office continues to be severely under-resourced. While appreciating the delicate economic situation and the austerity measures that the government has had to apply, it notes that the budget for the Office has remained unchanged since 2009, while its functions have since multiplied significantly. In addition to his responsibilities as Equality Body and Antidiscrimination Authority, the Ombudsman Office was also appointed as National Mechanism for the Prevention of Torture (in 2009), as National Human Rights Institution (in 2011), as Independent Authority for the Rights of the Disabled (in 2011) and as monitoring body for the return of irregular migrants (in 2013), without these extensions of the mandate being accompanied with any increase of staff or budget. This lack of resources (the Office has less than 30 staff) has resulted in significant delays in the examination of complaints which, according to civil society representatives, has a negative effect on the ability of complainants to obtain an effective remedy, such as in a subsequent court proceeding where the statute of limitation may have elapsed. In addition, the Ombudsman continues to be appointed by the President of the Republic and is not allowed to recruit its staff independently, which likely will result in the National Human Rights Institution not being accorded 'A status' according to the Paris Principles. The Advisory Committee considers that the continued lack of adequate resources raises serious concerns regarding the ability of the institution to effectively and independently perform its important tasks.

Recommendations

The Advisory Committee strongly recommends that the authorities raise awareness amongst relevant officials as well as in broader society of the applicable antidiscrimination standards, including as regards multiple forms of discrimination, in close coordination with relevant civil society organisations. Efforts must target in particular those groups that are known to be most exposed to discrimination, including by making information material available in languages most spoken by these groups.

It also calls on the authorities to enhance their financial and political support to the Ombudsman Office and to demonstrate the importance accorded by the government to the multiple functions of the Office by granting full independence and an adequate budget.

Measures to promote full and effective equality and equality data

Present situation

Safeguards contained in the bi-communal system of the Constitution in order to ensure that no discrimination shall result from a person's affiliation with one of the two communities were effectively suspended in line with the "doctrine of necessity" (see comments on Article 3). Consequently, Turkish Cypriots, including Roma who are affiliated with this community, continue to be affected by the

resulting restrictions on access to a variety of rights. This reportedly creates a situation of structural inequality and exclusion that is exacerbated by the fact that information on the existing restrictions and bureaucratic requirements is usually available only in Greek (see also comments in Articles 10 and 15).

The Advisory Committee welcomes the adoption of the “policy measures for the social inclusion of Roma” which were submitted to the European Commission in January 2012, indicating the main measures intended to be taken in the four established priority areas (education, employment, healthcare and housing), as well as the progress report on implementation submitted in December 2013. It reiterates, however, that for effective policies and strategies to be developed, close consultation with representatives of the target group itself must be established and maintained. While welcoming the fact that administrative entities receive Roma families who arrive from areas outside government control and gather information and data in order to adequately respond to their specific needs and concerns, it is unclear to what extent this information is gathered and recorded, in line with international standards, to develop effective policies for their effective equality and integration in Cypriot society jointly with and based on consultation with Roma representatives. Despite the small number of Roma residing in the Republic, the Advisory Committee regrets that there is reportedly still no organisation that would present and channel their views and concerns, or that would engage in raising their rights awareness and enhancing their capacity to pursue these rights and formulate demands towards relevant government agencies (see comments on Article 15).

At the same time, the Advisory Committee gained the impression that little effort has been made to engage directly with representatives of the Roma in order to improve their situation. It further understands that, despite the fact that the amendments to the Constitution in 2006 have rendered positive measures compatible with the Constitution, the Advisory Committee understands that a number of courts and legal professionals still view the promotion of the equality of disadvantaged groups as violating the equality principle contained in Article 28 of the Constitution. While some recognition has been expressed by authorities that measures to promote equality can be more effective when designed on the basis of reliable data, there exists to date no comprehensive system of regularly collecting disaggregated data on the access to rights situation of the various groups in society in order to better promote their full and effective equality. The Advisory Committee considers that concerted efforts must be made to obtain an accurate picture of the access to rights situation prevailing among the various groups, including disaggregated data related to age and sex, in order to develop targeted policies to promote the full and effective equality of the respective groups, in close coordination with representatives.

Recommendations

The Advisory Committee calls on the authorities to reach out actively to representatives of disadvantaged groups in society, in particular the Roma, to ensure that their views and concerns are directly taken into account in the development of any strategies or policies aimed at promoting their full and effective equality.

The Advisory Committee calls on the authorities systematically to gather disaggregated equality data, in line with international standards, to ensure that all policy measures related to the promotion of equality are based on sound data. In addition, awareness must be raised of the role and explicit legality of positive measures to overcome structural inequalities and promote equality more effectively.

Czech Republic

Adopted on 16 November 2015

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

Present situation

The Advisory Committee recalls that the Anti-Discrimination Act of 2009 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 contains provisions prohibiting direct and indirect discrimination on the grounds of *inter alia* race, ethnic origin, and nationality in the field of employment, health care, education, welfare, access to services and housing and establishes courts' jurisdiction in alleged cases of discrimination.

The Advisory Committee also notes that the Public Defender of Rights (Ombudsperson) has been mandated to act as the Czech equal treatment and anti-discrimination body, including by assisting victims of discrimination in submitting cases to the courts, publishing reports and issuing recommendations on discrimination issues. The Advisory Committee welcomes in this context, the Public Defender's Report on the ethnic composition of pupils in the former "special schools" published in June 2012 in which he, having examined the situation in 67 randomly selected "practical elementary schools", established indirect discrimination and recommended changes to the Law on Education which would prevent placement of a disproportionate number of Roma children in "practical schools" (for details see Article 12).

The Office of the Public Defender of Rights continues to enjoy public support and receives a substantial and growing number of complaints every year (8,202 in 2014, up from 6,339 in 2010). The Advisory Committee notes, however, that the Ombudsperson's mandate remains limited as it does not allow the office-holder to initiate in court proceedings or to conduct investigations in individual cases. The competence of the Public Defender is limited to issuing non-binding recommendations to the authorities. Also, the Ombudsperson cannot monitor legislation or advise the authorities in the process of drafting legal acts. This significantly weakens the ability of the Public Defender of Rights to combat discrimination.

Recommendations

The Advisory Committee calls on the authorities to continue to support and to co-operate with the Office of the Public Defender of Rights in order to allow it to carry out its role effectively, in particular as regards the enforcement of the Defender's recommendations.

The Advisory Committee further invites the authorities to consider expanding the powers of the Public Defender of Rights, in particular as regards the possibility of conducting its own investigations, and initiating court proceedings.

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

Present situation

The situation of the Roma minority remains the most urgent social problem in the Czech Republic. The Advisory Committee notes that the authorities have continued their efforts to combat discrimination and implement policies for Roma inclusion. Building on the experience gathered during the

implementation of the Roma Integration Concept for 2010-2013, the authorities developed the Strategy for Combatting Social Exclusion 2011-2015 and the National Roma Integration Strategy 2014-2020 (adopted in February 2015). The Advisory Committee notes that the goals set in the Roma Integration Concept for 2010-2013 and the Strategy for Combatting Social Exclusion have not been attained, in particular due to the absence of budgets for individual measures and indicators of their impact. The evaluation of the Strategy for Combatting Social Exclusion 2011-2015 shows that the Action Plan for execution of the 2012 D. H. judgment, submitted by the Czech government to the Committee of Ministers of the Council of Europe, was not implemented at all. Moreover, the weak mandate of the Council for Roma Minority Affairs, which was the main body responsible for overseeing its implementation, did not empower it to impose measures to be implemented or issue sanctions on local and regional authorities for failure to implement them. In addition, the Concept and the Strategy for Combatting Social Exclusion 2011-2015 did not adequately associate Roma, as its main beneficiaries, with its implementation. There was no scope for active involvement or participation of Roma themselves in programming, implementing and evaluating the implementation of different measures. The Roma were seen rather as passive beneficiaries of measures developed for them by the majority society.

The Advisory Committee notes the adoption of the National Roma Integration Strategy 2014-2020. The Strategy, which provided much greater detail than previous policy documents, sets goals, deadlines, performance indicators and assigns responsibilities in the key areas of employment, health, housing, social protection, education, support for Roma culture and language, personal security and over-indebtedness. The Advisory Committee considers that it is too early to comment on the likely effectiveness of the Strategy. It notes, however, that policies implemented in the framework of previous strategies have not achieved their goals in any of the fields and calls on the authorities to engage required resources in every way with a view of achieving real progress in integrating Roma. The Advisory Committee notes nonetheless, that the authorities did not publicly present and discuss the Strategy prior to its adoption, limiting the publicity to a press release. This fact, together with the negative attitude of majority society towards Roma, is one of the factors which may impact negatively on the effectiveness of the Strategy.

In this context, the Advisory Committee notes with regret that, unlike other national minorities, the Roma still continue to face serious and entrenched difficulties and discrimination, in particular as regards access to employment, health-services, main-stream and higher education, housing, eviction of Roma families from town centres, widespread anti-Gypsyism, and hate speech. No progress has been achieved thus far, in particular as regards lowering the number of Roma children attending “practical schools” (for details see Article 12).

The Advisory Committee deplores in particular a systemic discrimination of Roma in the housing market, with many owners refusing to lease to Roma on account of their ethnicity, resulting in the vicious circle of “residential hostels” existing on the outskirts of many municipalities. These overpriced and substandard hostels, where whole families are crammed into a single small room, without adequate sanitary facilities, are operated by private entrepreneurs and financed by municipal subsidies paid directly to the landlords. According to the authorities there are some 100,000 persons living in hostels of this nature. The location of such hostels, usually far from the town centres, compounded by inadequate transport facilities, increases segregation of Roma in marginalised communities, decreases prospects for employment and limits access to mainstream schools for Roma children. In this context, the Advisory Committee notes further with deep concern that according to media reports an amendment to the Act on Assistance in Cases of Material Need, which entered into force in May 2015, transferred the responsibility for deciding on applications for housing benefits from the Labour Offices to municipalities.

Reportedly, many municipalities have begun using these new competencies and the number of rejected applications has increased substantially in recent months, threatening as many as 17,000 persons with evictions.

The Advisory Committee has also learned with deep regret that ethnicity of Roma children placed in care institutions is recorded by the regional authorities, without consent of the children's parents or legal guardians, and has a discriminatory effect on the possibility of these children to find an alternative care family. In particular, the practice of arbitrary attribution of quasi-ethnic characteristic, such as "Roma", "half-Roma", "looking like a Roma" by social workers responsible for child welfare are not acceptable and incompatible with the Framework Convention, and should be stopped.

Another issue of serious concern is the continuing wide-spread anti-Gypsyism and hate-speech aiming to intimidate Roma and threaten the local Roma residents with persecution, verbal abuse and physical violence. In its gravest forms, extreme right-wing political organisations, such as the Workers' Party of Social Justice (DSSS) organise rallies and marches on Roma housing estates, such as the 2013 rally in České Budějovice and Duchcov and the 2013 and 2014 rallies in Ostrava, often ending in violent clashes with the police. Very worryingly, the anti-Gypsyism is not limited to marginal extreme right-wing political parties, such as DSSS which, in the 2013 parliamentary elections, obtained only 0.86% of votes and failed to win a seat. Other political parties, such as a right-wing populist party, Dawn of Direct Democracy, appeal openly to anti-Roma sentiments in their electoral campaigns, with its leader calling for "the Roma to return to India". The Advisory Committee regrets to note that a part of the Czech population is receptive to such messages and the political parties promoting them. Worse still, even prominent politicians such as the chairperson of the Senate Subcommittee on Human Rights and Equal Opportunity, representing mainstream Christian Democrats, and the mayor of the town of Vsetín do not shy from using inflammatory language and qualify Roma as "inadaptables" or "anti-social".

Recommendations

The Advisory Committee strongly urges the authorities to make sustained 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 population.

In general, Roma representatives should be closely involved in all projects and activities concerning them, such as those implemented in the framework of the Strategy for Combatting Social Exclusion 2011-2015 and the National Roma Integration Strategy 2014-2020 and others, particularly in the housing sector.

The Advisory Committee calls on the authorities to redouble their efforts to combat manifestations of intolerance, racism and xenophobia present in Czech society, to monitor the situation more effectively and to investigate and apply adequate sanctions when necessary.

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

Present situation

The Advisory Committee recalls that the Czech Government issued a public statement of regret in November 2009, officially apologising for the sterilisation of Roma women without their prior free and informed consent. It further notes that a number of victims of sterilisation without prior free and informed consent have not been compensated and continue to press their cases through the courts.

In this context, the Advisory Committee welcomes information on the draft law on compensation for victims of coerced sterilisation currently elaborated by the Ministry for Human Rights and Equal

Opportunities. This law, if adopted, would establish the regulations to help victims sterilised between 1966 and 2012, who have been unable to seek compensation through the courts or any other way, and finally provide some measure of justice to victims.

Recommendation

The Advisory Committee urges the authorities to compensate without further delay all victims of sterilisation without free and informed consent. The authorities should ensure that relevant legal provisions on prior informed consent are adhered to at all times.

Denmark

Adopted on 20 May 2014

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

The Advisory Committee recalls that a solid legislative basis has been established in Denmark to protect individuals against discrimination. Although the Constitution of Denmark does not contain a general anti-discrimination and equality provision, it states in Chapter VIII, Section 71(1) that “no Danish subject shall be deprived of his or her liberty because of his or her political or religious convictions or because of his or her descent”. This provision is supplemented by more detailed secondary legislation. In particular, the Prohibition of Discrimination in the Labour Market Act, adopted in 1996, offers civil law protection against discrimination on the labour market. In line with the Danish tradition of regulating the labour market by collective agreements between the labour market social partners, the provisions in this Act may be replaced by provisions in collective agreements if they provide at least the same protection against discrimination as the statutory provisions of the Act, or better.

In addition, to strengthen the protection offered by the Prohibition of Discrimination due to Race Act of 1971, the Prohibition of Discrimination due to Race Criminal Act enacted in 1987 covers the following grounds: race, colour of skin, national or ethnic origin, belief and sexual orientation. It also contains a prohibition against discrimination in the provision of goods or services, and as regards access to public places or events.

The Advisory Committee finally wishes to recall and commend the Ethnic Equal Treatment Act of 2003 which prohibits discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social advantages, education and access to and supply of goods and services, including housing and offers pecuniary compensation to victims of discrimination. The Act further includes provisions on the shared burden of proof and prohibits victimisation, thus protecting individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

The Advisory Committee is pleased to learn that the Board of Equal Treatment Act, which was established in 2009 to deal with complaints of discrimination, was amended in 2012 to require the president of the Board to be a High Court judge and the vice-presidents to be city court judges, thus strengthening the status as well as the expertise of the Board.

In this context, the Advisory Committee notes that the number of cases decided upon by the Board has been rising steadily every year. According to the information provided by the Ministry of Employment, whereas in 2009 it decided on 64 cases and in 2010 on 122 cases, in 2013 the number of cases was 263, of which 41 concerned allegations of discrimination based on race or ethnic origin. The remaining cases concerned alleged discrimination on the grounds of gender, age, disability, sexual orientation, political opinion, social origin, religion or belief. However, although the Board of Equal Treatment has become better known in the four years since its inception, there is still a lack of awareness and, according to some reports, lack of confidence as to its effectiveness as a remedy for persons belonging to different groups, and allegedly apprehension on the part of some victims to come forward fearing adverse effects of complaints. The Advisory Committee considers that there needs to be broader awareness of and accessibility to anti-discrimination complaints' mechanisms.

The Advisory Committee notes nonetheless that in 2012 the Board, together with the Council for Ethnic Minorities, founded in 1999 and operating under the aegis of the Ministry of Children, Gender Equality, Integration and Social Affairs, and the Danish Institute for Human Rights, organised a series of public meetings aiming to raise awareness of the legal protection available in cases of ethnic discrimination. In addition, the information provided in the State Report on the allocation of €2,7 million in 2012 -2015 to support initiatives promoting civic citizenship and combating ethnic discrimination is welcome.

It is regrettable, however, that resources put at the Board's disposal, with the annual operating budget of €250 000 and administrative staff working on a part-time basis, do not allow it to develop its activities further. The Advisory Committee welcomes recent information about the establishment of an anti-discrimination unit within the secretariat of the Board of Equal Treatment with a budget of €1,3 million for the period 2014-2016. It notes that the purpose of the unit is to work for equality and against discrimination by examining the extent and nature of discrimination against persons with disabilities and against ethnic minorities as well as organising activities aiming at preventing and reducing the number of cases of discrimination.

Recommendations

The Advisory Committee urges the authorities to increase visibility, accessibility and public awareness about the work of the Board of Equal Treatment, in particular targeting groups at risk of discrimination and to provide resources needed by this body to carry out its mission effectively.

Data collection

The Advisory Committee notes that there have been no significant developments as regards data collection in Denmark in the recent years. The Central Population Register (CPR) of Denmark provides information on a person's place and date of birth, marital status and citizenship. On the basis of data contained in the CPR, "Statistics Denmark" regularly prepares statistics on age, gender, marital status, nationality, place of birth, present address and family information. In accordance with the Processing of Personal Data Act, "Statistics Denmark" does not collect information on ethnicity, race or religion. In this context, the Advisory Committee notes that some additional, albeit fragmentary, information on languages spoken by non-native Danish speakers is collected by the Ministry of Education in the process of assessing the language skills of children at the start of pre-school in order to base instruction on each child's abilities and language competencies.

In this context the Advisory Committee wishes to recall that international standards do not prevent states from collecting data on nationality, ethnicity and languages spoken at home. On the contrary, the Recommendations for the 2010 Censuses of Population and Housing, prepared by the Conference of European Statisticians in co-operation with the Statistical Office of the European Communities (EUROSTAT) and the United Nations Economic Commission for Europe, stipulate that multi-ethnic countries with long-established minorities and/or recently arrived immigrant populations may wish to collect information on the ethnic composition of the population, on mother tongue, the knowledge and practice of languages as well as on religious communities and denominations. The data are relevant for the understanding of the cultural diversity of the population, the position of ethnic groups in society as well as for the definition and monitoring of evidence-based anti-discrimination policies.

Recommendation

The Advisory Committee calls on the authorities to find means of obtaining reliable data on the situation of all groups irrespective of their formal recognition as national minorities. Such data collection should be carried out in close consultation with the persons concerned, while fully respecting international standards on the protection of personal data.

Danish Institute for Human Rights

The Advisory Committee notes with interest, that since the adoption of its third opinion on Denmark, the position and mandate of the Danish Institute for Human Rights (DIHR) have changed and its independence was strengthened in June 2012 with the enactment of a new law. The mandate of the DIHR, hitherto centred on research, promotion and coordination of human rights projects in Denmark and abroad, was explicitly expanded to promote the equal treatment of all people regardless of sex, race or ethnic origin, inter alia by the provision of assistance to victims of discrimination by pursuing their complaints about discrimination, launching independent inquiries into discrimination, publishing reports and submitting recommendations in matters regarding discrimination.

The Advisory Committee welcomes the information contained in the State Report that the budget of the DIHR was increased significantly in the period 2011-2012, in line with the new mandate, by €2,8 million and that this increased level of funding has been maintained in 2013 and 2014. It also notes that the independence of the DIHR was strengthened thanks to changes in the manner in which the DIHR's Board, which acts as an oversight body by laying down policy guidelines for the Institute's activities and appointing its Director, is composed. Of the 14 members of the Board, six are now appointed by the rectors of the Danish Universities, six by the Council for Human Rights (a mixed-composition body grouping representatives of a number of civil society organisations and authorities), one by the Greenland Council for Human Rights and one by the DIHR staff of 26.

In addition to its primary role, the DIHR assisted in 70 cases in relation of all forms of discrimination in 2013, up from 28 cases in 2010. In most cases, the Institute's assistance focused on the counselling of applicants and directing them either to the Board of Equal Treatment, the Ombudsman or the ordinary courts.

Taking into consideration the fact that the legislative changes, organisational arrangements and funding adjustments are all quite recent, the Advisory Committee is not in a position to comment on the impact that they all have on the effectiveness of the DIHR in promoting anti-discrimination measures and assisting the victims of discrimination. The Advisory Committee notes that there is a need for the DIHR

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to further strengthen its collaboration with the groups concerned in order to ensure that rights are protected and effectively guaranteed.

Recommendation

The Advisory Committee encourages the authorities to review the implementation of the Danish Institute for Human Rights – Denmark's National Human Rights Institution Act with a view to ensuring that the resources put at its disposal correspond to its expanded mandate and enable it to carry out its tasks effectively, independently and in co-operation with representatives of the minorities concerned.

Estonia

Adopted on 19 March 2015

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

Present situation

The Advisory Committee recalls that the Equal Treatment Act adopted in 2008 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 Office of the Gender Equality and Equal Treatment Commissioner has been tasked with providing advice and assisting persons filing complaints regarding discrimination, as well as with providing non-binding opinions concerning alleged cases of discrimination. Regrettably, the Commissioner's powers continue to be curtailed to responding to complaints or drafting general reports, without the possibility of instigating legal proceedings or providing an on-going monitoring of implementation of legislation.

The Advisory Committee notes that in spite of the fact that the Office of the Commissioner has been established in 2009, the number of cases has been low. The Advisory Committee notes that in 2013 only four cases lodged with the Commissioner alleged discrimination on grounds of nationality or race. In one of these cases the Commissioner established that indeed the applicant was discriminated against on the ground of his nationality. Regrettably, the case involving the Ministry of Foreign Affairs of Estonia has shown the full extent of the limits of the Commissioner's power, as her opinion was disregarded by the administrative entity in question (for further details see under Article 15).

The Advisory Committee notes with concern that the Office of the Gender Equality and Equal Treatment Commissioner remains seriously under-resourced in staff and financially. Although some programme-based foreign funding was put at the disposal of the Commissioner in 2012, it was earmarked to promote only one area of her activity (gender equality).

There have been no changes to the legislation regulating the functions and activities of the Chancellor of Justice. The Chancellor conducts constitutional review of legislation, acts as Ombudsman and can initiate court proceedings against any legal entity governed by public law. In cases involving only private parties he may act as a mediator and propose conciliation proceedings between the victim and the alleged perpetrator of discrimination. It has to be noted however that such conciliation proceedings are

voluntary and both parties to the dispute must be in agreement to initiate them. This seems to provide an explanation why the conciliation procedure was used only once in 2014.

In 2013, the last year for which information is available, the Chancellor received 168 applications in his capacity as the Ombudsman, of which 39 alleged discrimination. The Advisory Committee notes that 12 per cent of the applications were submitted in Russian.

The information on awareness-raising and training activities conducted by the Chancellor of Justice among society as well as relevant public services, in particular law enforcement, with the aim of increasing awareness of the legal remedies available for protection against discrimination, and more broadly - on his mandate - is welcome. The Committee further welcomes the information that, with the assistance of the Chancellor, the Council of Europe “Manual for Human Rights Education with Young People - Compass” is currently being translated into Estonian and will be broadly distributed to Estonian schools.

Recommendations

The Advisory Committee calls on the authorities to provide adequate human and financial resources to the Office of the Gender Equality and Equal Treatment Commissioner to enable it to provide effective advice and support to victims of discrimination throughout the country. It reiterates its call on the authorities to consider broadening the powers of the Commissioner so that she can act more effectively against discrimination affecting persons belonging to national minorities.

The Advisory Committee calls on the authorities to ensure through targeted measures that awareness of the Chancellor of Justice and his mandate are enhanced within the broader population, including among persons belonging to national minorities.

Finland

Adopted on 24 February 2016

Article 4 of the Framework Convention

Legal and institutional framework for the promotion of equality of persons belonging to national minorities

Present situation

The legal and institutional structure pertaining to human rights and in particular non-discrimination has undergone significant changes between 2010 and 2015, which have rationalised and strengthened the government’s commitment to protect and enhance human rights, including with respect to persons belonging to minorities. The legal centrepieces relevant in this context are the Non-Discrimination Act (1325/2014), the Act on the Non-Discrimination Ombudsman (1326/2014) and the Act on the National Non-Discrimination and Equality Tribunal of Finland (1327/2014), which all entered into force on 1 January 2015. The Non-Discrimination Act covers now all grounds of discrimination and applies to all public and private activities, excluding private life, family life and the practice of religion. The obligation to promote equality is expanded to cover not only public authorities, but also education providers, educational institutes and employers. These are required to draw up plans to promote equality – in the

case of employers if they have at least 30 employees. Interlocutors of the Advisory Committee highlighted that the fact that the action plans have now become compulsory should help with their elaboration and implementation which, so far, had neither been systematic nor effective. However, they observe that the government should monitor them thoroughly.

As a result of the reform, the Ombudsman for Minorities was replaced by a Non-Discrimination Ombudsman who now supervises compliance with the Non-Discrimination Act with regard to all grounds of discrimination with the exception of employment. It is under the Non-Discrimination Ombudsman's authority to receive complaints from citizens and, if founded, to make recommendations, provide conciliation on a voluntary basis, transmit the case to the National Discrimination and Equality Tribunal or bring it to court, although not in its name.

Even if it operates now under the Ministry of Justice and is supported by the annual government budget, the Non-Discrimination Ombudsman is an independent and autonomous authority which reports directly to Parliament and is free to appoint its staff. According to interlocutors of the Advisory Committee, the institution is trusted and viewed as independent by civil society including national minority representatives. However, the expansion of the Ombudsman's mandate was feared to put at risk the previous leadership of the institution with respect to minorities' protection. The Non-Discrimination Ombudsman informed the Advisory Committee that for the time being, although diminished, complaints related to ethnicity are still the main component of its workload in particular concerning discrimination against Roma in all venues of life and the expectation is that they will increase again due to the current immigration wave. The Advisory Committee notes with appreciation the Non-Discrimination Ombudsman's awareness of the implications of the new mandate on its previous role towards minorities. The Office of the Ombudsman indicated its intention to offset them through a prioritisation strategy and the reorganisation of its working methods (more adequate gathering of data, focus on cases which may have a multiplier effect, awareness-raising campaign about the new structure, etc.).

The reform also replaced the National Discrimination Tribunal of Finland with a new National Discrimination and Equality Tribunal which is also entrusted with supervising compliance with the Non-Discrimination Act. The Non-Discrimination Ombudsman or an association promoting non-discrimination may submit a case to the Tribunal for consideration free of charge with the consent and on behalf of the person being discriminated against. The Advisory Committee welcomes the new institution and its competences as well as the connection between the Non-Discrimination Ombudsman and the Tribunal. However, it also observes that the latter still cannot order any compensation to be paid. Moreover, some interlocutors consider too little is done to make the Tribunal known. Observers also consider its composition problematic because it includes the private sector employers' association (EK) and the Confederation of Finnish Industries (ESK) while being in charge, for example, of supervising compliance with the Non-Discrimination Act of the equality plans by employers.

Finally, during the reference period, Finland established the Human Rights Centre which, along with the Human Rights Delegation (a body whose members broadly represent the Finnish human rights actors) and the Office of the Parliamentary Ombudsman forms the national human rights institution complying with the Paris Principles. The Centre, which is functionally autonomous and independent, was established because promotion of human rights was deemed to require better co-ordination and co-operation as well as more resources. The Advisory Committee also acknowledges the fundamental role played by the Parliamentary Ombudsman to protect human rights in general and in particular regarding

the Sámi and the Roma. Finally, a network of human rights contact persons in all ministries has been made permanent.

Recommendations

The Advisory Committee encourages the Non-Discrimination Ombudsman to ensure that the protection of minority rights remains high on its priorities and to make full use of the new institutional framework in connection with the other reformed institutions to ensure the continued, effective protection of these rights within its broader mandate.

It further calls on the authorities to provide adequate political and financial support to the Non-Discrimination Ombudsman Office to enable it to pursue effectively its well-established role of protecting minorities and to fulfil its broader mandate, including by ensuring coverage of the legal costs for liable parties, as well as to promote awareness of the new National Discrimination and Equality Tribunal.

Measures to promote the full and effective equality of persons belonging to national minorities

Present situation

Relevant implementation steps for the overall protection of human rights were taken in the period 2010-2015 resulting in the adoption of the first National Action Plan on Fundamental and Human Rights for 2012-2013, as well as in other strategies and action plans concerning national languages, Sámi languages and the Roma. The Advisory Committee welcomes the elaboration of the First National Action Plan on Fundamental and Human Rights which covered protection against discrimination, equality and promotion of participatory rights for persons belonging to minorities as well as the enhancing of good ethnic relations and the combating of racism. The Advisory Committee understands that the second Action Plan which is currently under preparation is expected to focus on less numerous and more precisely defined priorities as well as to be better co-ordinated with the budgetary process as compared to the first. Measures to promote effective equality and access to rights for persons belonging to national minorities, such as anti-discrimination counselling training by the then Ombudsman for Minorities and the Good Relations project have also been implemented.

While the Advisory Committee will consider in detail some of these measures and the language strategies under Articles 10, 12, 14 and 15, several of its interlocutors underlined that the main and general concern with these implementation documents was their implementation. Although well prepared through an inclusive process, often the action plans and strategies do not develop their full potential and fail to achieve the desired objectives due to the lack of human and/or financial resources. While acknowledging that the government is responsible for allocating resources in the most appropriate way taking into account any given circumstance, the Advisory Committee believes that it is important to assess carefully the impact of such decisions on persons belonging to minority communities, especially if disadvantaged, so as to avoid jeopardising progress already achieved and the trust built.

Although according to the evaluation of the 2009 National Policy on Roma, carried out in 2013, progress was accomplished in particular as regards basic education, teaching, awareness and co-ordination on Roma issues at national and local levels, Roma employment and adult education, as well as housing, nevertheless they remain particularly challenging largely because of the discrimination Roma experience in all these areas. The Advisory Committee observes that authorities and minority representatives agreed that positive results were achieved in certain sectors such as education because of the

consultation and involvement of Roma in decision making at both national and municipal levels, on the top of specific funding being available. NGOs' commitment and participation in implementing the Policy was also important to make it known and used by the beneficiaries through projects and initiatives developed by those who have an understanding of the issues and needs on the ground.

Nonetheless, the Advisory Committee gained the impression that it was common opinion that the shortcomings in the implementation of the first National Action Plan stemmed from the fact that there was no overall budget line dedicated to it, and that the funding was rather provided by discretionary government transfers (e.g. Ministry of Education), or the EU (e.g. the European Structural and Investment Funds). The Advisory Committee understands that currently, no specific resources have been earmarked for continuing the implementation of the Plan, apart from the exception of the education budgetary line and, potentially, EU funding. Additionally, implementation at local level is hampered not only by scarce resources, but also because of the uncertainty over the repartition of tasks within municipalities is unclear.

The Advisory Committee also notes with concern that, as acknowledged by the authorities and the minority organisations themselves, discrimination is still widespread. Youth and adults struggle to find their role in society because of lack of education, discrimination in access to the labour market and also, because of the growing community self-awareness that certain traditional customs make societal participation more difficult, especially for women. Finally, the Roma Advisory Board also alerted the Advisory Committee of the worrying development of discrimination against non-Finnish Roma, who moved to the country in the last decades. As they often are EU citizens, they do not fall under the migrant integration policy and their subsistence needs are taken care of at a day care centre in Helsinki, but on a precarious basis.

Recommendations

The Advisory Committee encourages the authorities to give priority and allocate resources for the implementation of measures already envisaged in national action plans and strategies, looking for synergies to minimise expenses. It also calls on them to ensure that, in the second Human Rights National Action Plan, minority rights will continue to be among the priorities.

As regards Roma, it calls on the authorities to earmark resources to continue implementing the National Action Plan, focusing in particular on adult education and tackling discrimination over access to the labour market.

Collection of equality data

The Advisory Committee is aware that there are no disaggregated data available on the number, age structure or socio-economic status of persons belonging to minorities in Finland. This is mainly due to the fact that as the population in Finland is not registered on ethnic grounds, no relevant statistical data exist. Ad hoc thematic reports and surveys have been carried out in recent years by different ministries. In particular, as regards the Roma population, several studies have been carried out to gather a deeper knowledge of the discrimination they face in all areas of life and this knowledge guides policies and a multitude of projects. They span from non-discrimination campaigns to a specific Roma portal to improve awareness among the majority population, from cultural initiatives targeting youth, to housing, dialogue with Roma civil society and projects targeting rehabilitation of Roma women in prisons. In 2012-2014, the Finnish League of Human Rights led a successful project (Co-operation as a source)

which targeted Roma communities and NGOs to raise their awareness of what constitutes discrimination and provide guidance on how to tackle it.

Nonetheless, the Advisory Committee considers that the regular gathering of reliable and disaggregated equality data related to the number and situation of persons belonging to national minorities allows for a deeper understanding of the specific challenges faced by members of the various groups, as well as the adoption and implementation of effective minority protection and equality promotion policies.

Recommendation

The Advisory Committee invites the authorities to collect disaggregated equality data on the situation of persons belonging to minorities, including by carrying out thematic reports and surveys, as a means to adopting and implementing effective minority protection and equality promotion policies.

Germany

Adopted on 19 March 2015

Article 4 of the Framework Convention

Legislative and institutional framework against discrimination

Present situation

The General Equal Treatment Act, enacted in 2006, has now been in force for more than eight years. The Advisory Committee remains concerned that the Act includes many exceptions, weakening its impact in practice. Moreover, it applies only to private law relationships; accordingly, acts of public bodies, including for example the police and education authorities, are not covered by its provisions (see further below, Articles 6 and 12). In cases where discriminatory acts have been committed by public bodies, the only option for complainants is to bring proceedings in the administrative courts, invoking the constitutional principle of equality before the law enshrined in Article 3(3) of the Constitution. However, in contrast with the remedies available under the General Equal Treatment Act, there is no possibility of obtaining the award of damages in such proceedings. Persons belonging to national minorities continue to express concern at this state of affairs. Civil society actors more generally have also repeatedly pointed to the need to strengthen the General Equal Treatment Act itself, as well as the institutional position, independence and resources of the Federal Anti-Discrimination Agency.

The Advisory Committee welcomes the considerable efforts made in recent years, notably by this Agency, to make anti-discrimination legislation and the relevant remedies more accessible to the public. A network of ten anti-discrimination offices has been established in cities outside Berlin, with support from the Agency, as part of a pilot project. Ten of the *Länder* have also joined the Coalition against Discrimination launched by the Agency in 2011, with the aim of engaging *Land* and local authorities more directly in the fight against discrimination. The Agency has also pursued its research work, inter alia conducting a large-scale study on attitudes to Sinti and Roma as part of its thematic year on ethnic discrimination in 2014 (see further below, Article 6).

The Advisory Committee notes with regret that the General Equal Treatment Act remains as yet insufficiently known by the general public, despite the welcome awareness-raising efforts referred to above. It is also reported that few lawyers are familiar with the Act, although training for lawyers

organised by the German Institute for Human Rights in recent years may be changing that. The weak role attributed to the Agency and to non-governmental organisations in individual cases also creates obstacles to using the Act in practice. The Advisory Committee underlines that victims of discrimination are frequently vulnerable and lacking financial resources. While legal aid may be available to them, legal aid cases are not generally attractive to lawyers, in particular in fields of law with which they are unfamiliar. The Advisory Committee shares the concerns repeatedly voiced by civil society that this overall situation hinders the use of the General Equal Treatment Act, including by persons belonging to national minorities. It emphasises that the very nature of discrimination, which strikes at the heart of persons' essential and inalienable characteristics, makes it particularly important that access to justice for victims of discriminatory acts be as simple as possible.

The Federal Anti-Discrimination Agency has indicated that out of 19 700 inquiries referred to it since 2006, only six concerned discrimination against persons belonging to national minorities (all of them concerning Sinti and Roma). There are no overall figures regarding the number of cases in which a victim belonging to a national minority chose to seek advice from other structures. However, the Advisory Committee notes that the Rhineland-Palatinate section of the Association of German Sinti and Roma reports receiving an average of 50 complaints of discrimination per year. The Advisory Committee has also received reports of discrimination against Sinti and Roma in access to education, employment and housing (see further below, comments with respect to Articles 12 and 15). As noted in the previous monitoring cycle, the Advisory Committee regrets that the lack of any overall statistics on cases brought under the General Equal Treatment Act makes it difficult to assess the impact of this law on the fight against discrimination based on ethnic origin or affiliation with a national minority.

Recommendations

The Advisory Committee calls on the German authorities to review the impact in practice of the General Equal Treatment Act with a view to strengthening it in order to ensure that it provides effective protection against discrimination. Such a review should encompass inter alia the fields of law covered by the Act, the actors subject to its provisions, the impact of exceptions on its effectiveness in practice, and the representation of victims in court, including the possibility of bringing representative or collective actions.

The Advisory Committee strongly encourages the authorities to continue supporting efforts to raise the awareness both of the general public and of legal professionals to the contents of the General Equal Treatment Act and the avenues of redress available to victims of discrimination, including when such discrimination was committed by public actors.

The Advisory Committee reiterates its call on the authorities to consider broadening the powers of the Federal Anti-Discrimination Agency so that it can act more effectively against discrimination. It also calls on them to ensure that the Agency has sufficient resources to allow it to carry out its duties effectively.

Equality data

Present situation

The Advisory Committee is aware that the authorities are reluctant to gather or disclose sensitive personal data, especially as regards ethnic origin, given the past abuse made of such data by the National Socialist regime. It also acknowledges that many persons belonging to national minorities share these reservations. Accordingly, there are no official statistics regarding the number of persons belonging to national minorities in Germany. Nor are there reliable data regarding the equality of access to rights of persons belonging to national minorities.

The Advisory Committee observes that, while the historical reasons for the lack of such data are well known, the absence of the latter makes it difficult to analyse the situation of persons belonging to national minorities as regards equal access to rights and to design targeted policies to promote their full and effective equality. It again cautions against assuming, in the absence of equality data broken down by ethnic affiliation or minority status, that membership of a national minority has no impact on a person's economic, social or cultural status. This concern is reflected in fields such as equal access to education, employment and housing (see comments with respect to Articles 12 and 15 below). It moreover notes that there exist means of obtaining reliable statistical data related to the minority population while fully respecting international standards on the protection of personal data – in particular the principles of voluntariness, anonymity and free self-identification – and allowing for multiple and situational identification. The Advisory Committee considers that these possibilities should be explored, in full consultation with the representatives of national minorities.

The Advisory Committee also notes that some qualitative data on the situation of persons belonging to national minorities do exist, thanks inter alia to research and studies conducted by non-governmental organisations and to the regular publication in some *Länder* of reports on the situation of persons belonging to national minorities in their jurisdiction. These sources may provide information regarding the extent to which persons belonging to national minorities are able to exercise their rights, which may assist the authorities to respond better to the needs expressed by national minorities.

Recommendation

The Advisory Committee encourages the authorities to make appropriate use of existing data to assist them in designing measures to promote the full and effective equality of persons belonging to national minorities. It further invites them to seek additional means of gathering reliable quantitative and qualitative equality data with respect to the access to rights of persons belonging to national minorities, while fully respecting international standards on the protection of personal data.

Institutional and legal framework for the protection and promotion of minority rights

Present situation

The Advisory Committee welcomes the recent strengthening of important parts of the legal framework in place to guarantee the protection of minority rights in Germany. Following amendments introduced in the Constitution of Schleswig-Holstein in December 2014, constitutional recognition is now granted in Schleswig-Holstein not only to the Danish minority and Frisian ethnic group but also to the German Sinti and Roma minority. The Advisory Committee regrets, however, that when amending the Constitution of Brandenburg to strengthen its anti-racism and anti-discrimination content, similar constitutional recognition of Sinti and Roma was not introduced in this *Land*, which continues to expressly recognise only the rights of the Sorbian minority. While the primary concern of the Advisory Committee is access to rights in practice (see also above, Article 3), it emphasises that where constitutional recognition of minorities is granted, this should be done without arbitrary distinctions.

In Brandenburg, the Sorbs/Wends Act was strengthened in some important regards through amendments that came into force in June 2014. These have inter alia led to the appointment of a Commissioner for Sorbian/Wendish Affairs with the rank of State Secretary, assisted by a full-time staff member (see further below, Article 15); created a clear legal basis for using bilingual signs on public buildings and buildings of public interest in the traditional settlement area of Sorbs; introduced the possibility for bringing collective claims; and broadened the definition of the traditional settlement area of Sorbs, which no longer requires both the language and culture of Sorbs/Wends to have been kept

alive in the locality in question but only one or the other. The Advisory Committee notes however that municipalities that may fall within the new, expanded definition are not automatically included in the traditional settlement area of Sorbs; interested towns or villages, or the Council for Sorbian Affairs of the *Land* Parliament, must apply to the competent Ministry within two years of the entry into force of the amendments (i.e. by May 2016) for the relevant localities to be included in the traditional settlement area of Sorbs.

The Advisory Committee welcomes recent efforts made by certain *Länder* to provide a clearer and more secure legal framework for their work on issues of concern to Sinti and Roma. It notes with interest in this regard the Treaty signed in November 2013 between the authorities of the *Land* of Baden-Württemberg and the Baden-Württemberg Association of German Sinti and Roma, which came into effect in January 2014 (see further below, Articles 5 and 15). It also notes with interest the signing in March 2014 of a framework agreement between the government of Hesse and the Hesse Association of German Sinti and Roma (see further below, Article 5).

The Advisory Committee welcomes the fact that a number of structures are in place at federal and *Land* level to guarantee the effective protection of minority rights (see further below, Article 15). However, it notes with regret that efforts to advance the realisation of minority rights are at times complicated by the division of responsibilities for minority issues within Germany (see for example below, Article 13, Danish minority schools). It is pleased to note efforts made at the federal level to engage all the *Länder* authorities in the implementation of the rights set out in the Framework Convention, and notes with interest in this context the annual implementation conference, held at the invitation of the Federal Ministry of the Interior and including representatives of the federal government, governments of the *Länder* and national minorities. It also welcomes the organisation in Berlin in November 2014, under the patronage of the Speaker of the Federal Parliament, of a high-level conference on the languages covered by the European Charter for Regional or Minority Languages in Germany. It regrets, however, that no *Länder* signed up to the policy document jointly presented on this occasion by the Council for National Minorities and the Federal Commissioner for National Minorities. It understands that the Federal Commissioner for National Minorities is supporting the efforts of representatives of national minorities to have this document examined by the Federal Parliament, and emphasises that while the authorities of the *Länder* may be responsible for enacting legislation and implementing the necessary measures in practice, the federal authorities have a crucial role to play in ensuring that the standards for which they are responsible under international law are translated into reality throughout the territory of Germany.

Recommendations

The Advisory Committee encourages the authorities to ensure that where minorities are granted constitutional recognition, this is done without arbitrary distinctions. German Sinti and Roma should in particular be recognised on an equal footing with other national minorities.

It invites the authorities of Brandenburg to take a flexible and inclusive approach with respect to applications for inclusion of additional localities in the traditional settlement area of Sorbs.

It encourages the federal authorities to use to the full their right to exercise oversight over the actions of the *Länder* and issue instructions in order to ensure that the rights of persons belonging to national minorities are properly implemented throughout Germany.

Promotion of full and effective equality of Sinti and Roma

Present situation

The Advisory Committee takes note of the Integrated Packages of Measures to Promote the Integration and Participation of Sinti and Roma in Germany submitted by Germany to the European Commission in 2011 in the context of the EU Framework for National Roma Integration Strategies up to 2020. This essentially contains an overview of the various measures and strategies already in place in 2011 at the level of Germany and the *Länder* to promote the access of Sinti and Roma to education, employment, healthcare and housing. The Advisory Committee takes note of the logic underlying the distinctions made by the authorities in this document between German Sinti and Roma and various categories of “foreign Roma”, who may have access to different levels of protection depending notably on whether they are citizens of EU member states or are so-called “third-country” nationals. However, it regrets that this logic tends to focus on drawing distinctions between the measures to which different groups may have access, rather than on finding ways to achieve, as far as possible, full and effective equality. It cautions against concluding, for example, that because German Sinti and Roma are subject to the same rules and have access to the same measures as other German citizens, it is necessarily the case that enough has been done to ensure that they are fully integrated in both theory and practice.

While positive measures to promote the effective equality of Sinti and Roma such as those described in the appendices to the Integrated Packages of Measures are welcome, the Advisory Committee regrets that this document – which should have provided an opportunity to take an in-depth look at barriers to effective equality of Sinti and Roma and means to overcome such barriers – lacks both evidence-based analyses of the issues at stake and benchmarks for evaluating the extent to which the measures taken have improved the situation. It recalls in this context its earlier examination of the issues surrounding the lack of equality data (see above).

Recommendation

The Advisory Committee urges the authorities to ensure that efforts to promote the effective equality of Sinti and Roma take an evidence-based approach focusing on targeted measures to overcome barriers to equality. Benchmarks enabling the impact of measures taken to be evaluated should be set and the measures to be adjusted as necessary on the basis of such evaluations, in full consultation with representatives of Sinti and Roma.

Hungary

Adopted on 25 February 2016

Article 4 of the Framework Convention

Institutional and legal developments in the area of discrimination

Present situation

The Advisory Committee notes that Article XV (2) of the new Fundamental Law of 2011 guarantees fundamental rights “to everyone without discrimination [...] on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status” thus confirming the principle of equal treatment. Furthermore, Article IX (5) of the Fundamental

Law as amended by the Fourth Amendment of 1 April 2013 states that “[t]he right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community”.

The Act on Equal Treatment and Promotion of Equal Opportunities of 2003 (hereafter the Equal Treatment Act) prohibits both direct and indirect discrimination and contains an open-ended list of protected grounds, including race, colour, language, religion, nationality and national/ethnic origin. The Advisory Committee notes that according to a widely held view, the Act meets the requirements expected of non-discrimination legislation. It shares, however, the view expressed by ECRI in its fifth monitoring cycle report on Hungary that the Act does not expressly prohibit discrimination by association, incitement to discriminate or aiding another to discriminate, which is a shortcoming that the authorities should review and rectify.

Legislative amendments to the Equal Treatment Act, adopted in 2011 and 2013, strengthened the position of the Equal Treatment Authority, established in 2005, and secured its independence both as regards its operation and financial autonomy. The Authority has been vested with wide-ranging powers including: conducting investigations upon request or *ex officio*, an *actio popularis* in order to protect the rights of persons and groups whose rights have been violated and commenting on draft legislation and the drafts of administrative decisions concerning equal treatment. The powers of the Authority in confirmed cases of discrimination include making legally binding decisions and ordering remedial action, including the imposition of fines ranging from 50,000 to six million forint (HUF). The Advisory Committee notes that the Authority receives every year a number of complaints alleging discrimination on the grounds of ethnic origin or race, mostly from the Roma. It has to be noted however that the number of complaints has decreased in the last five years, possibly due to the lack of trust in the system, as violations are established by the Authority only in less than 10% of cases. This is most regrettable, given that an overwhelming majority of observers agree and circumstantial evidence demonstrates that discrimination against Roma is a real and persistent phenomenon.

The Advisory Committee notes with consternation that an amendment introduced by the Minister for Human Resources to the Public Education Act of 2011 exempted faith-based schools from the requirements of the Equal Treatment Act allowing *de facto* “benevolent segregation” to be re-introduced into the education system. This legislative change was confirmed in April 2015 by a decision of Hungary’s Supreme Court (the Kuria) to overturn earlier rulings of lower courts and exempt the Greek Catholic Church’s segregated school in Nyíregyháza from anti-discrimination provisions in law. This ruling effectively declared segregation of Roma pupils legal in schools run by religious groups. Furthermore, in October 2015, the Supreme Court ruled that “benevolent segregation” is an interpretative principle that as such binds other courts. The Advisory Committee is deeply concerned by this development running diametrically contrary to principles of integration and equal treatment.

The Advisory Committee is deeply concerned that this extremely worrying development will be further entrenched when a governmental decree specifying the grounds on which such “benevolent segregation” is to be considered as legal is adopted. It notes that the Commissioner for Fundamental Rights (see below) expressed concern that, regardless of what any legislation on remedial segregation will say, the decision on what may constitute lawful “benevolent segregation” will remain arbitrary. The Advisory Committee is deeply alarmed by these developments and considers them fundamentally incompatible with full and effective equality protected under Article 4 of the Framework Convention.

The concept of “benevolent segregation” is further strengthened by the notion of “catching up” (*Felzárkozás*), which was originally introduced in a 1962 government decree that allowed for the creation of “Gypsy classes” with the aim “to make it possible for the pupils to continue their studies successfully in normal classes after one or two years.” Although the notion of separate Roma classes has over the years been conclusively proven ineffective in providing quality education and increasing the chances of inclusion of Roma children in mainstream education, it has survived in Hungary and is even being promoted and justified. The Advisory Committee finds this deeply worrying as the notion of catching-up places the burden of overcoming the existing low attainment and high school dropout levels of Roma children squarely on the shoulders of the victims of discrimination. It allows also the majority population and the authorities not to feel concerned by the continuing inequality and discrimination (see related comment under Article 12).

The adoption of the Act CXI of 2011 on the Commissioner for Fundamental Rights (hereafter “the Commissioner”) replaced on 1 January 2012 the Parliamentary Commissioner for Civil Rights in existence since 1993. As a result of this reform, the ombudsman system of Hungary was reorganised: the Commissioner is responsible for the protection and promotion of fundamental rights with special attention to the rights of the child and people with disabilities and the office holder’s deputies protect the interests of future generations (a successor of the Parliamentary Commissioner for Protection of the Interests of future Generations) and the rights of nationalities living in Hungary (a successor of the Parliamentary Commissioner for National and Ethnic Minorities). The former Ombudsman for Data Protection was transformed into the National Authority for Data Protection and Freedom of Information.

The Commissioner, elected by the parliament by a qualified majority for a renewable term of six years, is independent from the government and subject only to the provisions of the Fundamental Law and the acts of the parliament. The Commissioner’s competencies include hearing and considering complaints against public authorities as well as to initiating *ex officio* investigations concerning implementation of a particular fundamental right. Upon finding a violation, the Commissioner can address a recommendation to the respective authority or its supervisory organ which is obliged to inform him/her of its position on the merits of the recommendation and on the measures taken within thirty days. In case of a negative answer or a lack of any response, the Commissioner and his/her deputies resend their recommendations to the authorities concerned; if implementation of the recommendations is unsuccessful, the Commissioner informs the parliament of the case in the Annual Report. Furthermore, the Commissioner scrutinises laws and policies and makes proposals for amendment, modification or repeal. In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness-raising activities as well as advocacy.

Two deputies assist the Commissioner: one of them is responsible for the protection of the rights of national minorities, whereas the other deputy protects the interests of future generations. The tasks of the Deputy Commissioner responsible for the protection of the rights of nationalities are twofold. The office holder assists the Commissioner (proposing that the Commissioner institute proceedings *ex officio*, participating in the inquiries of the Commissioner, and proposing that the Commissioner turn to the Constitutional Court) takes action under her own authority. The Deputy Commissioner initiates the undertaking of awareness-raising campaigns addressed to institutions and the public on issues affecting minority rights, in particular if these rights are threatened, reviews the social inclusion strategy and monitors its implementation. The Deputy Commissioner may also propose amendments to legislation impacting on the rights of national minorities living in Hungary.

The Advisory Committee notes with regret that the Deputy Commissioner's role is limited principally to observation, evaluation and awareness raising with more decisive actions left to the competence of the Commissioner. In particular, the right of inquiry into alleged violations related to fundamental rights are vested with the Commissioner. It has to be noted that a refusal on the part of the Commissioner to act a Deputy's proposal to institute proceedings *ex officio* or to turn to the Constitutional Court has to be notified to the parliament in the Commissioner's Annual Report and reasons for such a refusal must be given. This procedure seems to be heavily bureaucratized and would appear to unnecessarily limit the role of the Deputy Commissioner who cannot initiate the establishment of facts in any case which may come to the office holder's attention. While recognising that the unified structure of the Commissioner's institution may require a co-ordinated and comprehensive approach, the Advisory Committee considers that such an outcome could be achieved by empowering the Deputy Commissioner to conduct enquiries independently and to propose specific and general remedial measures to the Commissioner.

When acting within the reserved field of competence in 2014, the Deputy Commissioner provided opinions on draft legislation affecting the rights of national minorities commenting on nearly 250 working documents. Furthermore, the Deputy Commissioner engaged in over 150 awareness-raising undertakings ranging from conferences, round tables to lectures and workshops. Finally, the Deputy Commissioner provided analytical information to the Commissioner in particular on the social, health-care and education issues affecting the Roma, and in general on challenges to the education system affecting all national minorities in Hungary.

The local elections of 2014 resulted in a new composition of municipal councils and national minority self-governments. The Advisory Committee welcomes information on anti-discrimination training workshops for all members of municipal national minority self-governments conducted successively throughout Hungary by experts of the Ministry of Human Capacities.

Recommendations

The Advisory Committee urges the authorities to refrain from any exceptions to the Public Education Act that could lead to "benevolent segregation". They should ensure that anti-discrimination legislative provisions are uniformly and consistently applied throughout Hungary.

The authorities should ensure that the office of the Commissioner for Fundamental Rights is granted all the support it needs to continue carrying out its role effectively, particularly as regards the enforcement of the Commissioner's recommendations. The position of the Deputy Commissioner responsible for the protection of the rights of nationalities should be reinforced by empowering the office to undertake and conduct enquiries independently and on its own initiative and to propose specific and general remedial measures to the Commissioner.

The Equal Treatment Authority should be given the necessary resources to investigate effectively alleged cases of discrimination and encouraged to take more vigorous action, including by sanctioning the perpetrators when the facts have been established.

Situation of the Roma

Present situation

The situation of the Roma minority remains the most urgent social problem in Hungary. The Advisory Committee notes that the authorities have continued their efforts to combat discrimination and implement policies for Roma inclusion. The Advisory Committee notes that building on the Decade of

Roma Inclusion Strategic Plan for 2005-2015, the National Social Inclusion Strategy “Extreme Poverty, Child Poverty and the Roma” (NSIS) for 2011-2020 was adopted in 2011, responding to the call of the European Commission. Furthermore, also in 2011, the Framework Agreement between the Government and the National Roma Self-Government (NRSNG) was signed and the Governmental Action Plan for the Implementation of the NSIS in the years 2012 to 2014 was adopted. The Strategy was further revised and updated in 2014. The Advisory Committee regrets to note, however, that the revised version, unlike all the other aforementioned documents, has not been published in English and that it is not available even in the Hungarian language on the website of the Deputy State Secretary responsible for Social Inclusion at the Ministry of Human Capacities. Any comment on the revised Strategy is therefore second-hand, based on comments and assessments made by the Advisory Committee’s interlocutors. The Advisory Committee regrets this lack of transparency on the part of the authorities. It welcomes however the information that the National Roma Self-Government was consulted at the drafting stage of these documents and agreed with its goals. It has to be noted, however, that the Framework Agreement between the Government and the National Roma Self-Government was shared neither with civil society organisations, nor with the public.

All the documents indicate the authorities’ awareness of the serious and entrenched difficulties Roma continue to face in Hungary, in particular as regards access to employment, health services, primary, secondary and higher education, housing segregation, eviction of Roma families, widespread anti-Gypsyism, and hate speech. The authorities themselves note the continuing deterioration of the economic situation of some 1.2 million people living in extreme poverty in Hungary, and acknowledge that within this group Roma “are the poorest of the poor and have been least reached by the various inclusion programmes”. The Advisory Committee notes that all programmes developed in this area in Hungary, follow the “explicit but not exclusive targeting principle” called for under the EU’s 10 Common Basic Principles on Roma Inclusion (see also under Article 15).

According to the Strategy, more than 60% of Roma live in the countryside, in rural, often remote locations, mostly in segregated residential localities, in rather poor housing conditions. The Strategy asserts that “there are some one hundred localities in Hungary which have definitively turned into poor Roma ghettos, while in another two hundred localities, this situation will emerge in the near future as a result of seemingly irreversible processes. [...] The employment rate of the Roma population barely reaches 20%. The 10% employment rate amongst Roma women is particularly alarming.” The consequence of the combined factors of extreme poverty, unemployment and inadequate housing significantly shortens life expectancy of the Roma. In fact, the life expectancy of the Roma is 10 years shorter than the average in Hungary.

The Advisory Committee notes that one of the aims of the Strategy is to bring about a 20% reduction in the rate of poverty of three particularly vulnerable groups: families with children, those living in severe material deprivation and people living in households of low labour intensity. This goal would, if achieved, lift 450,000 people out of poverty. To achieve this goal, the authorities introduced in 2011 a new public work system, which aims at providing support to long-term unemployed people, especially those receiving the Employment Replacing Subsidy (ERS), by offering public work. This large-scale scheme provides public work to around 200,000 to 300,000 individuals every year. Although no official data disaggregated by ethnicity is collected, and the proportion of Roma among public workers cannot be defined exactly, the authorities estimate that the number of Roma people involved in public employment was 54,769 in 2012. The Advisory Committee notes, however, that the persons employed under the scheme are not covered by the Labour Code and, therefore, some of the legal arrangements which protect workers do not apply to public workers. Furthermore, the principle of equal pay for equal

work is not applied to persons employed under the scheme, given that the wage of public workers is considerably lower than the standard minimum wage (77% of the minimum wage or 85% in cases where secondary education is a precondition for employment).

The Advisory Committee finds the systemic discrimination of Roma children in the field of education deplorable. Not only has there been no progress with desegregation in schools, but on the contrary the proportion of Roma children attending segregated schools has risen in recent years. According to available data, the number of schools in the 2014-2015 school year, where Roma students constitute more than 50% of the intake, is 381. Approximately 45% of Roma children attend such schools. The Advisory Committee notes with deep concern that neither the Strategy (adopted in 2011), nor its updated version of 2014, make combatting segregation a priority or a long-term goal of the authorities. Consequently, no measures have been taken to reduce segregation.

On the other hand, various scholarship schemes have been developed to support socially disadvantaged children. In the framework of the Útravaló–MACIKA Scholarship Programme, about 17,000 students took part in the Road to Vocation, Road to Secondary School, and Road to the Secondary School Leaving Examination sub-programmes in the 2012-2013 school year. About two thirds of the beneficiaries declared themselves to be Roma. The scholarships awarded are performance-related, depending on the average obtained at each grade, and their amounts have significantly increased as from the 2013-2014 school year. Under the Integrational Pedagogic System programme, which aims to promote social inclusion, 6.8 billion HUF were disbursed to 78,626 students and 25,269 kindergarten children in 2012-2013. In general, the Advisory Committee is pleased to note that although the school attainment of Roma children is still well below the national average, various support schemes coupled with the hard work of the persons concerned, have resulted in the emergence of a small educated Roma elite capable of formulating and voicing Roma concerns and points of view on issues of interest to the Roma and the society as a whole.

In the field of housing, the Strategy aims to eliminate segregated neighbourhoods wherever possible and to refurbish housing units and provide amenities in those localities that cannot be de-segregated. The Advisory Committee notes that in the initial stages of the implementation of the Strategy, the steps taken to implement it consisted primarily of bulldozing the slums without proper consultation of the residents and without adequate preparation of the resettlement to alternative housing. Starting in 2012, the authorities have taken a more comprehensive approach and, working in co-operation with local Roma national minority self-governments, have developed more comprehensive schemes of infrastructural investment, construction of new apartments and the modernisation of the existing ones. The Advisory Committee was given a presentation of one of such housing refurbishment projects during its visit to Pécs. Throughout Hungary, the first eight pilot projects, involving renovation of 100 residential units and community buildings, were carried out in 2012. Since 2013, 22 additional housing schemes in 31 segregated areas have been implemented, with financing provided by the EU (4.68 billion HUF) and the Hungarian authorities (3.31 billion HUF). The Advisory Committee regrets to note that a number of corruption scandals have been reported in connection with the inappropriate disbursement of funds and personal enrichment of persons in charge, and that criminal investigations are ongoing.

The Advisory Committee furthermore regrets to note that the local authorities playing a pivotal role in any such scheme have not always displayed a positive and benevolent attitude towards Roma when addressing their housing needs. In particular, the situation in Miskolc, the fourth biggest town in Hungary, led to a tense stand-off in May 2014 between some 450 Roma residents and local authorities. The local authorities, having decided to relocate residents of a Roma slum located on the outskirts of the

town, conducted repeated “raids” of inspectors accompanied by the police controlling the maintenance of the housing units, investigating respect for refuse collection and recycling, checking adherence to pet-keeping regulations and observing the general state of the municipal property in which the apartments were located. Often social workers responsible for child protection would be part of such teams which, according to the Advisory Committee interlocutors, was a clearly implicit threat to “non-cooperative” Roma families of taking children into care on any number of pretexts. The conflict in Miskolc led to an intervention of the Commissioner for Fundamental Rights and the Deputy Commissioner for the Protection of Nationalities who, in a Joint Report, identified a number of human rights’ violations and made recommendations to the City Council and other authorities concerned. The Advisory Committee regrets to note that, upon publication of the report and recommendations, the Mayor of Miskolc stated in a press conference that inspections would continue regardless of the expressed concerns and calls for an end to such practices.

Recommendations

The Advisory Committee urges the authorities to exert additional efforts to prevent, combat and sanction the inequality and discrimination suffered by the Roma in the fields of education, employment and housing. The authorities should step up their efforts to improve the living conditions of Roma and to promote their social inclusion.

In general, the concerned Roma communities and, in particular, their representatives should be closely involved at all stages of planning, implementation and evaluation of the projects and activities concerning them, such as those implemented in the framework of the National Social Inclusion Strategy 2011-2020, particularly in the housing sector.

Ethnic data collection

Present situation

The Hungarian National Statistical Office (NHSO) has over decades accumulated considerable experience and ability to collect, aggregate, analyse and present ethnic data. The results of the 2011 population census were published in March 2013. The NHSO regularly publishes analytical studies on various aspects of socio-economic conditions in the country, disaggregated by ethnicity, age, sex, education, employment, occupational qualifications, civil status, etc. A question on ethnicity is schematically inserted into all social surveys. By way of example one can refer to the “Quarterly labour force survey”, which provides data on employment disaggregated, *inter alia* by ethnicity.

Data collected by the NHSO is used by a wide range of institutions, at central, regional and municipal levels. For example, data disaggregated by ethnicity is used by municipalities which are all obliged by law to draw up social and health development plans. In addition, census figures are used in the monitoring process of the National Social Inclusion Strategy. Research institutes, such as the National Minorities Research Institute and the Hungarian Academy of Science, publish a wide variety of studies based on the data collected by the NHSO.

Recommendation

The Advisory Committee reiterates its encouragement made to the authorities in the previous Opinion to continue their efforts to ascertain the impact of policies on the socio-economic position of national minorities in all relevant areas while fully respecting the principle of self-identification and in accordance with international standards on personal data protection.

Italy

Adopted on 19 November 2015

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

Present situation

The Advisory Committee regrets to note that Italy is one of the few Council of Europe member states without a national independent institution for human rights operating in line with the Paris Principles. In spite of numerous recommendations including by the Advisory Committee, the European Commission on Racism and Intolerance (ECRI) and the UN monitoring bodies, and regardless of making repeated pledges to that effect, numerous initiatives to adopt a law providing for the setting up of such an institution have regrettably been unsuccessful.

The Advisory Committee recalls that the main task of the Office for the Promotion of Equal Treatment and the Fight against Racial Discrimination (UNAR), which was established in 2003, was the promotion of equal treatment and combatting all forms of racial and ethnic discrimination. The mandate of UNAR was expanded by an administrative act in 2010 to cover all grounds of discrimination, without a corresponding change in legislation. In this context, the Advisory Committee acknowledges ECRI's call on the authorities to formally extend by law the powers of UNAR. It further notes that the actual powers of UNAR remain weak. The Office is entitled to look into individual complaints alleging discrimination, conduct investigations and determine whether or not discrimination exists. In cases in which UNAR considers that indeed discrimination has taken place, it contacts the party responsible in writing and asks it to remedy the situation by ceasing the offending action or finding a solution to the discriminatory act. The power of UNAR relies entirely on its persuasion and moral authority. It is deeply regrettable that UNAR cannot bring legal proceedings in discrimination cases and its intervention is limited to *amicus curiae* briefs.

Regrettably, the institutional position of UNAR is weakened by the fact that it remains subordinated to the Department for Equal Opportunities of the Presidency of the Council of Ministers and its Director is a civil servant. This is contrary to Paris Principles governing the independence of equality bodies. It is welcome however, that both the funding (yearly ordinary budget of over 2 million Euros supplemented substantially by the EU) and staffing (around 25 staff members) are sufficient and enable UNAR to carry out its set tasks.

The Advisory Committee notes with interest the establishment in September 2010 of the Observatory for Security against Discriminatory Acts (OSCAD), a multi-agency body within the structure of the Ministry of the Interior. The main task of this body is to enhance the protection and promotion of the fundamental rights of all inhabitants and to combat discriminatory acts, including hate crimes. In particular OSCAD's goals include overcoming the phenomenon of under-reporting of crimes committed with a discriminatory motive by receiving reports, including anonymous ones, from institutions, professional or trade associations and private individuals, initiating immediate and targeted operational interventions at local level to be carried out by the National Police and the Carabinieri Corps and monitoring their developments. To achieve these aims OSCAD endeavours to establish a relationship based on trust and common understanding with the associations assisting persons threatened with discrimination with the view of strengthening the connection between civil society and police forces.

OSCAD, in co-operation with other Police structures, such as DIGOS (*Divisione investigazioni generali e operazioni speciali*), and civil society organisations active in the field, monitors incidents of discrimination and hate crimes. This work led to a number of criminal inquiries against operators of web-sites such as Stormfront and Holywar (see also under §60 for other OSCAD activities).

Recommendations

The Advisory Committee reiterates its call on the authorities to review without further delay the mandate and status of UNAR with a view to strengthening its competencies and continue 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 ensure that all the necessary conditions are met to enable OSCAD to continue to combat discriminatory acts, including hate crimes.

Application of the principles of equal treatment and non-discrimination with respect of the Roma, Sinti and Caminanti

The Advisory Committee notes that following the designation in 2011 of UNAR as the National Contact Point for Roma Integration Strategies, the National Strategy for the Inclusion of the Roma, Sinti and Caminanti 2012-2020 was finally adopted in February 2012. It is welcomed that when elaborating the Strategy, UNAR carried out extensive consultations with the key representative Roma organisations such as the *Federazione Romani* (a national association of about 30 Roma associations established in 2009 to promote the self-determination of Roma people and inter-cultural cohesion), *Federazione Rom e Sinti Insieme* (about 30 regional and local organisations principally of Sinti from northern and central Italy, lobbying for recognition of Roma, Sinti and Caminanti as minorities and in fostering active citizenship) and *Associazione UNIRSI* (International and National Union of Roma and Sinti in Italy, - the oldest Roma federation created in 1999 promoting Roma culture and dialogue within Italian society). It has to be noted however that some representatives of Roma considered that the invitation extended to them to take part in consultations was rather formalistic, extended out of politeness and political correctness rather than out of genuine interest to hear their views.

The Strategy outlines integrated actions in four key fields of intervention: education, employment health and housing. The Advisory Committee notes that the Strategy was evaluated positively by different key stakeholders including Roma representatives in particular as it marks a clear break with the past policies. It abandons the “emergency perspective”, the camp-centered approach and repudiates the concept of “nomadism” as supposedly inherent among the Roma. Instead it adopts an approach based on rights, and strives to create a national strategic framework for the integration of Roma, Sinti and Caminanti, by providing a coherent purpose of intertwined policies.

It has to be noted however that according to the European Commission’s assessment published in the spring of 2014, the implementation of the Strategy has not progressed significantly. In fact there have been serious delays in the setting-up of agencies and achieving anticipated results. Specifically, few concrete results could be demonstrated as regards all four key areas covered by the Strategy. One factor impacting on the effective implementation of the Strategy is the autonomy of the Regions and the Municipalities provided for by the Italian Constitution. By way of example, it can be pointed out that only eight out of twenty Regional Tables, which are to be the critical pivots of the Strategy, have been set up, three years after the launching of the Strategy. Additionally, the participation of Roma, Sinti and Caminanti representatives at those Regional Tables which have been set up is only formal (see further comment under Article 15). Finally, no dedicated funding has been earmarked for the implementation of the Strategy. The resources necessary to finance actions covered by the Strategy are to come from

rebranded national budgetary allocations in the four fields of intervention: education, employment, health and housing, EU and national funding under the Objective Convergence of regions (Calabria, Campania, Puglia, Sicily) financed by the European Social Fund and the European Bank for Reconstruction and Development (EBRD) and national and EU funds for “general Programme Solidarity and Management of Migration Flows”.

As regards housing, the Advisory Committee notes with deep concern that around 40,000 Roma continue to live in camps commonly referred to as “nomad camps” both “authorised” and “unauthorised”. The situation in such camps shows considerable variations, as observed by the Advisory Committee delegation’s visit to Italy. In some locations such as Lecce the authorities, in co-operation with local Roma residents, work together to improve living conditions in the camps and take measures to improve residents’ access to employment, education and health care. Such initiatives are commendable. However, while they provide essential conditions required for a decent standard of living, they do not address the fundamental issue of segregation and marginalisation of Roma.

In this context, it has to be recalled that the Council of State annulled in 2011 the state of emergency declared by the Italian government in 2008 and all measures and decisions that followed. Regardless of the ruling, the municipal authorities in a number of locations, for example, in Rome continued to allocate “housing” to Roma families in such camps. Worse still, in May 2014 the Municipality of Naples authorised construction of a “temporary” camp for Roma (*Cupa Perillo* camp, in Scampia) to be funded from the European Regional Development Fund (ERDF) earmarked for projects to strengthen economic and social cohesion. The situation is even worse in unauthorised camps. The Advisory Committee finds it most surprising that the authorities tolerate a state of affairs where people continue to live in undignified conditions, without access to basic amenities, surrounded by fencing and according to some sources “protected” by criminal organisations.

Against this alarming background, the Advisory Committee notes that the Tribunal of Rome found in a judgment pronounced in May 2015 that the Municipality of Rome had discriminated against Roma families by forcibly evicting them from one camp and assigning housing in pre-fabricated containers located in a remote location and surrounded by fencing. This ruling, if properly implemented, should in principle lead to the dismantling of segregated housing for Roma and providing them with adequate housing options, including social housing.

Recommendations

The Advisory Committee strongly urges the authorities to adopt more resolute and effective measures to prevent, combat and sanction the inequality and discrimination suffered by the Roma, Sinti and Caminanti, particularly women, and to promote tolerance and anti-discriminatory attitudes throughout the population.

In general, Roma, Sinti and Caminanti representatives should be more closely and effectively involved in all projects and activities concerning them, such as those implemented in the framework of the National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities 2012-2020 at national, regional and local levels.

Moldova, Republic of
Adopted on 25 May 2016

Article 4 of the Framework Convention

Legal and institutional framework relating to the equal access to rights of persons belonging to national minorities

Present situation

The legislative framework regarding the rights of persons belonging to national minorities was supplemented in May 2012 with the adoption of the Law on Ensuring Equality. The Advisory Committee welcomes the establishment of the Council to Prevent and Combat Discrimination and Ensure Equality on 1 January 2013 as a specialised body. The Equality Council consists of five members appointed by parliament, three of whom must be from civil society. Since becoming fully operational towards the end of 2013, the council has received some 385 complaints and has also opened a number of cases on its own initiative. In total, it has issued over 200 decisions, finding discrimination to have occurred in some 75% of admissible cases, the majority of these relating to discrimination based on age or disability as well as language (see also Article 10). The Advisory Committee is pleased to note that the Equality Council appears to have gained considerable trust among civil society and national minority representatives. It further welcomes its active engagement in a number of training and awareness-raising activities, as well as in public information campaigns to increase its outreach. According to its own representatives, a good third of the complaints received are inadmissible, however, which generally points to a still limited understanding in society of the provisions of the law and the mandate of the Equality Council. The Advisory Committee further notes the series of proposals for amendments of the relevant legislation that the Equality Council has presented in order to increase its effectiveness and address the operational shortcomings that have been exposed since the commencement of its activities. In particular, the body must be empowered to adequately investigate the facts surrounding complaints submitted to its review. Moreover, the fact that the Equality Council may only establish discrimination to have taken place without having the power to apply administrative sanctions has been criticised by a variety of interlocutors of the Advisory Committee as seriously hampering its impact.

The Advisory Committee further notes the adoption in April 2014 of the Law on the People's Advocate (ombudsman), according to which the Centre of Human Rights was reorganised and the number of "parliamentary advocates" was reduced from four to two "people's advocates". The institution, accredited as a National Human Rights Institution with "B" status, is completing a reform process aimed at strengthening its effectiveness, as repeatedly recommended over recent years. While welcoming the commitment to strengthen its competences, the Advisory Committee notes that insufficient resources and funding remain obstacles to the efficient functioning of the ombudsman's office. It is still housed in unsuitable premises and has not been provided with the means to recruit an adequate number of professional staff. More importantly, however, targeted measures to enhance its independence remain outstanding. According to the 2014 law, the institution's budget should be directly approved by parliament as part of the regular state budget. In practice, however, the Ministry of Finance reportedly still holds the right to veto, through a separate approval process. Moreover, following the one year delay in the appointment of the ombudsperson by parliament in April 2015, and the continued lack of agreement regarding a suitable second ombudsperson with a mandate for the protection of children's rights, trust in the institution's powers amongst civil society and the public remains limited. While it still receives some 2 000 complaints per year, the numbers are decreasing, particularly since the existence of the Equality Council. It is to be welcomed, however, that both bodies have been co-operating in a number of areas, including with regard to training and raising of public awareness.

Overall, the Advisory Committee notes with concern that the understanding of the nature of minority rights and the legal remedies available to persons belonging to national minorities for the promotion of their access to rights remains rather unclear amongst the communities as well as the wider public. The Law on National Minorities of 2001 mainly reproduces the provisions contained in the Framework Convention without providing specific guarantees on how to give effect to the various rights in the specific context of the Republic of Moldova. In its discussions with governmental and non-governmental interlocutors, the Advisory Committee gained the impression that minority protection is viewed mainly as an issue of preservation of cultures and traditions, yet there appears to have been little reflection on how to promote equal access to rights of persons belonging to national minorities as an integral part of the broader human rights agenda. The resulting confusion about the nature of minority rights seems to have prompted apprehension on both sides and led to a situation where, on the one hand, minority representatives do not always address the appropriate national institutions and available domestic mechanisms with their requests, while, on the other hand, public officials interpret common requests for recognition or access to minority rights as signs of disloyalty or demands for “autonomy” (see also Article 15).

Recommendations

The Advisory Committee calls on the authorities to increase their support for the efficient and fully independent functioning of the ombudsman’s office in line with the Paris Principles by ensuring proper funding and by providing the institution with suitable premises. The ongoing reform process must be completed without further delay and awareness should be raised, including through its regional offices, about its mandate and competencies in the promotion of human and minority rights throughout the territory of the republic.

It further calls on the authorities to enhance their support for the efficient functioning of the Equality Council by proceeding with the necessary amendments of the respective laws and bestowing adequate investigation and sanctioning powers on the institution to enable it to properly fulfil its role as an equality body, and by providing adequate human and financial resources.

It further encourages the authorities to enhance their efforts to raise awareness of the anti-discrimination legislative framework amongst public institutions, the population as a whole, and in particular amongst groups who are prone to discriminatory attitudes or affected by structural disadvantages, and to enhance public understanding of the Framework Convention and the nature and relevance for society of minority rights as an integral part of human rights.

Measures to promote the full and
effective equality of persons belonging to national minorities

Present situation

The Advisory Committee notes ongoing efforts in early 2016 towards preparation and adoption of an intermediary Human Rights Action Plan for 2016 under the co-ordination of the Ministry of Justice, following the expiry of the previous Human Rights Action Plan. A comprehensive new Human Rights Action Plan for the period 2017-2020 is expected to be developed following the Universal Periodic Review (UPR) which Moldova is undergoing in autumn 2016. There have been only limited and ad hoc references to the concerns of national minorities in previous action plans. The intermediary plan, for instance, does not mention the rights of persons belonging to national minorities, except for a reference to the preparation and training of Roma community mediators. The Advisory Committee considers the inclusion of minority rights as an integral part of the broader human rights agenda and priorities and thus an important means of ensuring that the needs and concerns regarding access to rights of persons

belonging to national minorities are comprehensively addressed rather than marginalised into the segments of culture and language preservation.

The Advisory Committee notes with concern that many Roma, in particular, continue to face serious obstacles in accessing a number of important rights, including in the fields of education (see Articles 12 and 14), employment and social services (see Article 15). Roma women are especially affected by multiple layers of structural inequalities and discrimination, which impede their enjoyment of basic rights. The adoption of the Roma Action Plan 2011-2015 was welcomed as a significant achievement and it is further welcomed that Roma representatives have been involved in preparing an evaluation report. According to them, the vast majority of measures foreseen in the action plan were not implemented, as the allocation of competencies for taking concrete action remained unclear and funding was grossly inadequate. In addition, the plan did not contain effective measures to address the widespread discrimination faced by Roma in their daily life, for instance when looking for employment. There are numerous reports of Roma being overtly or implicitly shown that their candidatures for existing positions are not being considered based on their ethnic affiliation. A new Roma Action Plan 2016-2020 is being prepared by the Bureau for Interethnic Relations in co-operation with the various line ministries. The Advisory Committee welcomes the fact that the proposal of minority representatives to include a gender perspective into the various chapters of the new action plan is reportedly likely to be accepted. However, it notes with concern that the main shortcoming of the previous action plan as emphasised in the evaluation report, namely its lack of implementation and supervisory mechanisms, risks not being comprehensively addressed.

The Advisory Committee further notes that no comprehensive solution has been found to the issue of documentation amongst Roma, despite the inclusion of this goal in the action plan. Lack of identity documents, often still caused by the absence of birth certificates, and lack of registration with the municipalities where they reside continues to seriously hamper the access of Roma to rights, while also rendering them at risk of statelessness. It is highly welcome that birth certificates are now issued directly in hospitals and efforts are also made to issue certificates free of charge to those born at home. Adults without a birth certificate, however, have to address the courts to establish their identity, which tends to be costly.

The Advisory Committee is pleased to note in this context the determination and commitment on the side of the authorities to conduct a large campaign in 2013 and 2014 aimed at preventing statelessness and addressing the situation of the over 223 000 persons who were still registered on 1 January 2013 as living in Moldova with old Soviet passports. In the course of the campaign, close to 213 000 individuals were issued with valid registration and identity documents free of charge. As of 1 January 2016, 10 486 persons remain registered as persons with old Soviet passports, but the majority is estimated to no longer live in the republic. The Advisory Committee further notes that just over 2 000 persons have been registered as stateless, with an additional 664 for whom the statelessness determination procedure is ongoing. The UNHCR further considers some 2 300 to be at risk of statelessness, as they have old Soviet passports containing a stamp designating them as having “undetermined citizenship”. Overall, some 5 000 individuals remain affected by statelessness or the risk thereof, a significant number of them belonging to national minorities, including Roma.

The Advisory Committee further notes the continued lack of reliable and disaggregated data on the particular situation regarding the access to rights of persons belonging to national minorities, which continues to hamper the preparation of targeted measures to promote their effective equality (see also Article 3). According to the 2004 census, for instance, the number of Roma in Moldova is just under 12 300. The independent data collection conducted by Roma organisations in 2013 in the various locations where Roma reside, resulted in the figure of over 102 000 Roma, while other estimates refer

to up to 250 000. Efforts have been deployed by the Ministry of Labour, Social Protection and Family as well as the Ministry of Health to gather data through relevant mapping exercises and the collection of information available in the registers of local family doctors. While welcoming these initiatives to obtain a more accurate understanding of the specific situation of persons belonging to national minorities in the various regions with a view to effectively addressing persistent inequalities, the Advisory Committee underlines that the right to free self-identification must be observed in all instances. In addition, a unified methodology should be applied in the collection of locally available information in close consultation with national minority representatives, including women and the elderly, to ensure that the common phenomenon of multiple discrimination is adequately considered.

Recommendations

The Advisory Committee calls on the authorities to prioritise the adoption of the Human Rights Action Plan and to ensure that the promotion of equal access to rights for persons belonging to national minorities, including women, youth, and persons in particularly disadvantaged situations, is appropriately included as an integral part of human rights.

It further urges the authorities to adopt a comprehensive strategic vision in the preparation and adoption of the Roma Action Plan 2016-2020 and to ensure that its implementation is prioritised, including through the allocation of an adequate budget, and effectively co-ordinated within all relevant line ministries. Roma representatives must be effectively involved in all steps of the process.

It further encourages the authorities to pursue the organisation of independent surveys and research on the living conditions and concerns with respect to access to rights of persons belonging to national minorities, including numerically smaller minorities, to ensure that quantitative and qualitative data is regularly made available for the design of targeted policies and measures aimed at the promotion of effective equality.

Norway

Adopted on 13 October 2016

Article 4 of the Framework Convention

Legal and institutional framework for the promotion of equality of persons belonging to national minorities

Present situation

Since 2014, the constitution includes a new provision (Article 98) providing for a general non-discrimination clause. Equality legislation was also reorganised in 2014 with the adoption of four acts, among which the Ethnicity Anti-Discrimination Act that prohibits discrimination on the basis of ethnicity, religion and belief. As ethnicity, according to this act, covers national origin, descent, skin colour and language, it also applies to persons belonging to national minorities. Amongst other issues, the law provides for a proactive duty to promote equality amongst the staff of public and private employers with more than 50 employees and to report on results. However, the implementation of the equality legal framework appears particularly complex (see below) and the government is currently preparing comprehensive equality legislation in the form of a single act incorporating the different acts. The Advisory Committee recalls that persons belonging to minorities may also experience multiple

discriminations arising from factors unrelated to national minority background such as age, gender, sexual orientation and other criteria.

In 2013, the Ministry for Local Government and Modernisation incorporated the former Ministry of Government Administration, Reform and Church Affairs and became responsible for national minorities. Since 2014, the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) in the Ministry for Children, Equality and Social Inclusion was also assigned the task to raise awareness and combat ethnic discrimination through dialogue with the organisations representing national minorities. The National Human Rights Institution (NHRI) was established in 2015 and has been entrusted with monitoring and reporting the human rights situation in Norway, including as regards national minorities.

National minorities continue to fall under the remit of the Equality and Anti-Discrimination Ombudsperson (LDO), who is in charge of promoting equality, enforcing anti-discrimination legislation through a complaint procedure, and providing guidance and advice to individuals and on legislation falling under its mandate. In its 'enforcing' role the Equality and Anti-Discrimination Ombudsperson gives opinions as to whether a breach of the equality legislation has occurred. The decisions of the ombudsperson may be appealed to the Equality and Anti-Discrimination Tribunal. The ombudsperson informed the Advisory Committee about the projects it carried out to promote the rights of persons belonging to national minorities, i.e. access to camping sites and to schooling for Roma children. The ombudsperson also assisted in the creation of a temporary forum for Tater/Romani and Roma women in order to encourage co-operation and dialogue between the groups on issues of common concern, such as education, child welfare services and employment. The forum was also a platform for the women to define areas of co-operation with the government.

The Equality and Anti-Discrimination Ombudsperson criticised the implementation of anti-discrimination legislation on ethnic grounds and questioned its effectiveness to ensure equality for persons belonging to minorities. For instance, the Office of the Ombudsperson encountered difficulties in fulfilling its task of monitoring and enforcing its reporting duty with respect to the obligation to foster equality by public and private employers. Apparently the law is not sufficiently precise for employers to understand what is expected from them. Moreover, notwithstanding that the Office of the Equality and Anti-Discrimination Ombudsperson, and its appeal body, are free of charge, the number of complaints they receive from persons belonging to national minorities remains lower than expected given both the socio-economic situation of persons, in particular women, belonging to those minorities and their exposure to discrimination, hate speech and hate crime. Ethnic minorities, including national minorities continue to be the target of hate speech and hate crime and to experience three-times more unemployment and language barriers in relation to work or health care. In 2012-2015, only 16 complaints were filed. The ombudsperson gave an opinion on 13 of them, finding one or more breaches of law in five cases, whereas three cases were dismissed. Only two cases were transferred to the Equality and Anti-Discrimination Tribunal, one of which was dismissed on appeal. The complaints were mainly filed by Roma or Tater/Romani and dealt with access to goods and services, housing, education, employment and equal treatment in connection with authorities, police and the judicial system.

Several of the Advisory Committee's interlocutors explained the low number of complaints filed by persons belonging to national minorities, in particular Tater/Romani and Roma, to be the consequence of both the low level of awareness of the procedure among the relevant communities and the lack of trust in an institution which is perceived to be closely associated with the authorities. Furthermore, complaints can only be submitted in Norwegian. Finally, neither the ombudsperson, nor the tribunal can award damages or compensation. Although compensation can be sought before the courts, free legal

aid is not available in general for anti-discrimination proceedings. Both the Office of the Equality and Anti-Discrimination Ombudsperson and the authorities indicated that a reform has been undertaken in connection with the adoption of the comprehensive equality legislation to improve the performance of the ombudsperson, *inter alia* by drawing a distinction between its roles of enforcing and promoting equality and anti-discrimination legislation. The Advisory Committee observes that, besides the matters mentioned above, the budget cuts imposed on the Office of the Equality and Anti-Discrimination Ombudsperson also seems to have prevented it from carrying out its tasks effectively. Therefore, in the Advisory Committee's opinion the potential separation of tasks may be beneficial, but the resulting new mechanism will have to be provided with the necessary powers and adequate financial and human resources.

The Advisory Committee finally notes that the government works on the presumption that each component of the administration (both central and local) takes responsibility for promoting the legal equality framework. Municipalities are key players in achieving equality as they provide most of the public services in the country, i.e. health and care services, day care, education and welfare. However, some of the Advisory Committee's interlocutors were of the opinion that local authorities seldom have the necessary competence to comply with national and international standards in their equality policies. In addition, even equality in the workplace on ethnic grounds within the public sector is weakly implemented due to an unclear division of responsibility. Bearing in mind that persons belonging to national minorities are also covered by the equality legal framework under the notion of ethnicity, the Advisory Committee is of the opinion that this framework is not applied as effectively as it should be with regard to these persons (see also paragraphs 24 and 28-30 below). Improving communication and co-ordination among the various actors at central level, as well as between the central and local levels could help to this end.

Recommendations

The Advisory Committee calls on the authorities to ensure that the outcome of the reform of the Equality and Anti-Discrimination Ombudsperson will strengthen effectively the complaint mechanism, amongst others by increasing awareness of persons belonging to national minorities about this instrument, including by targeting women and by providing information in languages other than Norwegian. National minority representatives should be consulted on the reform. Authorities should also grant free legal aid enabling victims to bring discrimination cases on ethnic grounds before judicial and administrative bodies.

The authorities should take steps to ensure that with respect to the application of the equality legislation to persons belonging to national minorities, the co-ordination between the central and local levels is improved and that on the local level awareness about these matters is raised. Comprehensive equality legislation should be adopted without delay and address the problem of possible compound multiple and intersecting forms of discrimination.

Measures to promote the full and effective equality of persons belonging to national minorities

Present situation

The Advisory Committee notes that the 2009 Action Plan for Equality and Prevention of Ethnic Discrimination was assessed in 2013 as being successful, but so far no follow-up has taken place. The Plan applied to immigrants, the Sami and other national minorities, and it included measures covering working life, education, housing, public services, culture and the media. However, the Advisory

Committee notes that the Plan was criticised by national minority organisations precisely because, notwithstanding its broad scope, its implementation focused mainly on immigrants. Indeed, the Advisory Committee finds it difficult to understand the extent to which the generic measures contained in the Action Plan have been applied also in respect of persons belonging to national minorities, including as regards women (e.g. the duty to make active efforts and report on equality in employment and access to public services) and whether the measures specifically addressing persons belonging to national minorities have been implemented (e.g. survey on Roma dwelling and access to services). It understands that the prohibition to gather data on ethnicity and the lack of research, as well as knowledge about national minorities in Norway had and continue to have a negative impact on policy making addressing these groups.

Several of the Advisory Committee's interlocutors were of the opinion that it was necessary to increase awareness and knowledge of national minorities, as well as competences to deal with the cultural diversity of society in the public sector and in society at large if measures striving towards equality were to achieve their purpose. Some progress has been accomplished, for instance in understanding the situation of the Tater/Romani minority by shedding light on past assimilation practices in order to start a reconciliation process (see Article 5). However, more remains to be done in order to increase awareness and knowledge of national minorities. This applies in particular to the public sector, considering the pivotal role of central and local administration in the conception and implementation of measures against discrimination on ethnic grounds.

The City of Oslo Action Plan for Roma, adopted in 2009, was assessed in 2014. The Advisory Committee learnt from national minority organisations that, with the exception of a few education-related measures, overall the 2009 Plan had not been successful in improving the disadvantaged situation of the Roma. It understands that the City of Oslo has decided not to adopt a comprehensive follow-up plan, but to concentrate on measures targeting the education of Roma children instead (see also Article 12) and to relocate guidance on access to welfare services at district level with a view to facilitating access to these services by the target population.

Recommendations

The Advisory Committee calls on the authorities to ensure that increased attention is given in future to the adoption of measures which effectively and appropriately address the needs of persons belonging to all national minorities and specifically those of women, within the broader framework of measures targeting the fight against ethnic discrimination. These measures should be thoroughly implemented by the various authorities responsible and adequately resourced in order to ensure effective access to rights for persons belonging to national minorities.

It also encourages central and local authorities to ensure that knowledge about national minorities and competences to deal with cultural diversity are improved in the public sector, for instance through training. Care should be taken during this process to ensure effective participation of persons belonging to national minorities.

Collection of equality data

The Advisory Committee notes that the collection of disaggregated data on persons belonging to national minorities remains problematic due to the existing legal framework banning ethnicity as a criterion for registration. It also understands that, for historical reasons, this type of registration is met

with strong resistance by some minority groups, who consider ethnicity to be a very sensitive and personal issue and who urge the authorities to refrain from gathering such data. However, the Advisory Committee also heard several interlocutors underlining how the lack of precise knowledge about the socio-economic situation of national minorities hinders the drafting of meaningful policies. For their part, the authorities acknowledge that more comprehensive and systematic collection of data is required on both the nature and the scope of discrimination against persons belonging to national minorities in different social areas, as well as on the causes of such discrimination.

The Advisory Committee observes that a number of research projects have targeted persons belonging to national minorities, and that, as a result of the 2009 Action Plan for Equality and Prevention of Ethnic Discrimination, the Ministry for Children and Equality set up a forum to collect equality data useful to the government. However, it appears that no follow-up has taken place for instance to provide an overview of the number of Kvens in Norway even though the minority itself expressed the wish for such an exercise.

The Advisory Committee considers that the regular gathering of reliable and disaggregated equality data related to the number and situation of persons belonging to national and ethnic minorities allows for a deeper understanding of the specific challenges faced by members of the various groups. It also helps in the process of adoption and implementation of effective minority protection and equality promotion policies. Such relevant data can be gathered through studies or other tools.

Recommendation

The Advisory Committee encourages the authorities to identify alternative ways of gathering disaggregated, anonymous data on the situation of persons belonging to national minorities to enable the adoption and implementation of effective policies for the protection of national minorities.

Slovak Republic

Adopted on 3 December 2014

Article 4 of the Framework Convention

Legal and institutional framework for the promotion of equality of persons belonging to national minorities

Present situation

The Anti-Discrimination Act, as last amended in 2013, contains adequate provisions against direct and indirect discrimination in different spheres of life, including employment, education and social security, covering private-law relationships and actions of public bodies. It is welcome that the most recent amendments have extended the prohibition of discrimination to the threat of discrimination and that the adoption of positive measures aimed at eliminating structural disadvantages of certain groups based on prohibited grounds to promote equal opportunities is now explicitly allowed. Overall however, there appears to be still only limited awareness in society about the anti-discrimination legislative framework, particularly among the most disadvantaged groups. While a number of NGOs are providing legal aid and have, often successfully, taken up civil and administrative cases related to discrimination, there are continuous reports of widespread discrimination, particularly against Roma, in many spheres of life that

remain unaddressed. The Advisory Committee considers that the findings of national and international courts in relevant discrimination cases should be disseminated widely to ensure that the population at large, particularly the groups most known to be regular victims of discrimination, are made aware of their rights and encouraged to make use of the legal remedies available to them in case of alleged violations.

The Public Defender of Rights (Ombudsperson) receives an increasing number of complaints (4 400 in 2013) from individuals regarding alleged violations of fundamental rights and freedoms by public bodies. According to the interlocutors of the Advisory Committee, she is trusted and viewed as independent by civil society, including national minority representatives. The Ombudsperson may also act on her own initiative and has investigated a number of serious concerns regarding human and minority rights violations, in particular pertaining to equal access to education for Roma children and the misconduct of police forces. The Ombudsperson considered the findings of such serious nature that she submitted a special report to Parliament in August 2013, requesting that the report be discussed at the next session. The Advisory Committee deeply regrets that to date, the report has not been discussed by Parliament. In addition, it considers that the Ombudsperson receives insufficient human and financial resources. Only 35 of the 57 positions from the staffing table have been filled and the overall budget, after repeated cuts, is reportedly spent to a large part on the renting of premises. The Advisory Committee further regrets that her recent request to provide funding for the opening of regional offices has not been granted, despite such presence being essential to increase overall awareness of fundamental rights in society.

The Slovak National Centre for Human Rights continues to monitor the implementation of the Anti-Discrimination Act, handling cases submitted by individuals (reportedly an average of 2 500 per year), some of whom it proceeds to represent in Court. In addition, it acts as general equality body, disseminating information, organising training activities and spreading awareness to prevent racial discrimination. The Advisory Committee welcomes the Centre's special engagement related to human and minority rights awareness in municipalities with substantial Roma populations, particularly following the police raid in Moldava nad Bodvou (see below comments under Article 6), aimed at increasing rights awareness among the Roma population and municipal authorities to prevent future tension, as well as plans of possible cooperation of the Centre with the Ombudsperson to facilitate a regional presence of the Ombudsperson through the Centre's regional offices. The Advisory Committee notes, however, that the Centre is still not viewed as entirely independent, including by national minority representatives, which may account for the generally low number of cases it receives. It is regrettable in this context that the planned reform of the Centre to strengthen its independence has not progressed and that the timeframe for the adoption of necessary amendments to the respective legislation has reportedly been extended to December 2015.

The Advisory Committee further understands that the National Strategy for Human Rights, which the Government Council for Human Rights, National Minorities, and Gender Equality, was tasked with preparing in 2011, has been submitted to the Cabinet after three years of elaboration. According to the interlocutors of the Advisory Committee, the preparation process has been quite participatory. At the same time, national minority representatives and independent observers criticise that the final outcome omitted many of their concerns and that political will is lacking to equip the more sensitive parts of the strategy, including those related to national minorities, with action plans to establish concrete priorities and benchmarks. The Advisory Committee notes that the aim of preparing and adopting a coherent legislative framework pertaining to the rights of persons belonging to national minorities has been included in the strategy. It continues to be unclear however to what extent the various governmental

entities involved in minority protection issues will coordinate their activities even after the adoption of the strategy and which body will assume the main coordination task. The Advisory Committee considers it essential for the authorities to engage, in close consultation with minority representatives, in a comprehensive evaluation of the existing minority related legislative and institutional framework to ensure that any future strategy or legislative framework pertaining to minority protection effectively addresses the concerns of persons belonging to national minorities.

Following the abolition of the key post of Deputy Prime Minister for Human Rights in 2012, the broader human rights related governmental structure is considered weakened by most observers. While a number of ministries have taken up separate parts of the human rights agenda, the main government advisory body on human rights, the Council for Human Rights, National Minorities and Gender Equality, was moved under the authority of the Ministry of Foreign Affairs. While the Minister also serves as Deputy Prime Minister, the Ministry does not have sufficient capacity or structures to deal with complex domestic human rights issues, its main focus lying in international relations. The Advisory Committee notes in this context the announcement in October 2014 that the Ministry of Justice will be taking over the responsibility for human rights issues at national level as of 1 January 2015. Overall human rights coordination is, however, further complicated by the fact that the Government Plenipotentiary for Roma Communities was placed, also in 2012, under the auspices of the Ministry of Interior, thus removing this important body from the human rights structure (see also further comments under Articles 6 and 15) despite the urgent and complex human rights issues surrounding the situation of Roma in Slovakia.

Recommendations

The Advisory Committee calls on the authorities to increase their efforts to raise awareness of the anti-discrimination legislative framework amongst the population as a whole and in particular amongst groups most prone to discriminatory attitudes.

The Advisory Committee further urges the authorities to provide adequate political and financial support to the Office of the Ombudsperson to enable her to effectively pursue her mandate and to speed up the ongoing reform efforts regarding the Slovak National Centre for Human Rights to ensure that it is functioning in full independence.

The Advisory Committee further calls on the authorities to ensure that the National Human Rights Strategy is adopted and implemented in full consultation with civil society representatives, and that adequate steps are taken to end the fluctuation in institutional responsibility for human and minority rights and facilitate effective and strategic inter-ministerial coordination on all issues pertaining to human and minority rights protection.

Measures to promote the full and effective equality of persons belonging to national minorities

Present situation

The Advisory Committee welcomes the fact that increasing efforts are made to conduct independent surveys and research into the living conditions of persons belonging to national minorities in Slovakia. The so-called Roma Atlas was published in March 2014 after one year of extensive research about the living conditions of Roma in 1070 out of 2890 municipalities. Research included Roma in segregated settlements, in residential concentration in towns or villages, and those living dispersed among the majority population, gathering information on the level of integration in terms of, among others, housing, access to infrastructure and services, level of education, as well as employment opportunities. According to the results, Roma constitute 7.45% of Slovakia's population, or over 400,000 persons,

which exceeds the official census results by almost four times. It is welcome that the Ministry of Labour, Social Affairs and Family is additionally engaged in regular statistical monitoring of living conditions of selected marginalised groups to facilitate the development of targeted policies for the promotion of equal opportunities.

A multitude of projects and other measures to promote effective equality and access to rights for persons belonging to national minorities, in particular Roma, has been implemented over the reporting period, many with EU funding, and a number of impressive achievements have been made. At the same time, interlocutors of the Advisory Committee refer to the lack of a comprehensive strategy overseeing all of these projects and the many actors involved as problematic. While not considered perfect, the Roma National Integration Strategy (RNIS) exists and a quite comprehensive Action Plan was subsequently adopted. Implementation of both documents remains scattered, however, and insufficient political weight and budgetary funding appears to be provided by government. The additional launching of the so-called “Roma reform” by the Government Plenipotentiary for Roma Communities in 2012 has contributed to a sense of confusion regarding governmental commitment to the RNIS, as it remains unclear to what extent this new initiative replaces or complements the RNIS and what activities are considered a priority. The Advisory Committee further gained the impression that Roma representatives themselves remain too little involved in the actual planning, decision-making and implementation of projects. This jeopardises their effectiveness as they are sometimes developed without understanding of the issues and needs on the ground and often are carried out by persons who are not Roma themselves and speak no Romani, and who therefore have difficulty in interacting with target beneficiaries.

Of particular and deep concern regarding full and effective equality and broader access to rights is the situation of Roma children in the education system (see comments under Article 12 below). The Advisory Committee further notes that many Roma continue to face grave obstacles in accessing rights in a number of spheres, such as health, housing, employment, and social services (see further comments under Article 15). Roma women, in particular, are reported to be affected by multiple layers of structural inequalities and discrimination that impede the enjoyment of basic rights. The Advisory Committee acknowledges the efforts made by the government and civil society in this regard, yet points again to the need for a comprehensive strategy in addressing the obstacles faced by Roma as a human rights issue that requires high-level government intervention and close coordination at central, regional and local level. While the Government Plenipotentiary for Roma Communities, who employs 50 staff, 20 of them in six regional offices located in areas where most Roma reside has made some efforts in this regard, he is viewed mainly as political player given the fact that he is also a Member of Parliament. In addition, his “Roma Reform” has been criticised as partially contradictory to the RNIS and as contributing to the public discourse according to which there is a sizeable category of “indecent Roma”, which nurtures underlying prejudice and stereotypes rather than formulating a strategy to overcome them.

Recommendations

The Advisory Committee encourages the continuation of independent surveys and research on the living conditions of persons belonging to national minorities, including the numerically smaller ones, to ensure that regular equality data is available for effective policy planning.

The Advisory Committee urges the authorities to apply more leadership and comprehensive strategic planning to the implementation of the Roma National Integration Strategy at central, regional and local

level. It is essential that Roma are involved in all steps of the implementation, monitoring and evaluation, including at senior level.

Spain

Adopted on 3 December 2014

Article 4 of the Framework Convention

Legislative and institutional framework against discrimination

No comprehensive equality and antidiscrimination legislation has been enacted in Spain. The Bill that was pending before the Parliament in 2011, and which was widely praised, was never enacted, due to the early general elections held in November 2011. Antidiscrimination provisions thus continue to be found in separate laws, and there is no single equality body competent to deal effectively with all forms of discrimination. The Spanish authorities have indicated that they consider it more important at this stage to collect data to determine the real incidence of discrimination in Spanish society (see further below) and to correct any specific weaknesses identified in the existing legislation.

The Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin has continued to publish useful studies, reports and recommendations for public authorities and private stakeholders on racial discrimination and has given input on various draft Bills and government strategies; it has also provided training to professionals and public servants on the prevention and elimination of racism and xenophobia. The Advisory Committee nonetheless regrets that the Council remains integrated as part of the Ministry of Health, Social Services and Equality rather than being a fully independent body; half of its members are moreover civil servants. It also notes with regret that in mid-2014 the President of the Council, who had been appointed in June 2013 and was appreciated by its members, resigned, reportedly in protest against the lack of effectiveness and weak institutional position of the Council, and has still not been replaced.

As regards individual complaints of discrimination, the Advisory Committee again welcomes the valuable work of the Network of Assistance to Victims of Racial or Ethnic Discrimination. Set up under the auspices of the Council for the Promotion of Equal Treatment but run in practice by seven NGOs able to provide specialised assistance and guidance to victims of discrimination, it is designed to serve as a first port of call for victims of racial or ethnic discrimination and continues to provide advice to them free of charge. In addition to the network's headquarters in Madrid, twenty offices are now in operation, with at least one in each Autonomous Community as well as an office in Melilla. Despite a regrettable interruption in its work between 2012 and early 2013, the Advisory Committee notes with interest that the network has handled over 1000 cases since its establishment in 2010, including 376 cases between March and December 2013. It warmly welcomes the provision of €600 000 per year in state funding to the network for each of the past two years (2013 and 2014).

Nonetheless, the Advisory Committee regrets that important questions relating to the resources available to the Council for the Promotion of Equal Treatment do not appear to have been resolved. While its budget for producing studies and reports was tripled from 2012 to 2013 – a welcome development –, the budget allocated for staffing was halved. Moreover, the Advisory Committee understands in particular that the members of the Council who are not civil servants, including its President, still carry out this function on a voluntary basis, a factor that may seriously compromise the Council's sustainability, and which also raises questions as to the role and level of importance accorded

to its work by the authorities. Similarly, the Network of Assistance to Victims does not have the capacity to litigate on behalf of victims and is only very rarely able to take on strategic litigation due to a lack of sufficient funds. In addition to the lack of an equality body empowered to handle individual complaints through informal procedures, victims of discrimination are often hampered in their access to courts, as such proceedings prove too costly and difficult for them. In this respect, the fact that discrimination appears mostly to occur in the private sector (in fields such as access to employment, access to goods and services and access to housing, where it reportedly remains a widespread belief that the principle of freedom of contract prevails over that of equal treatment) is an additional hindrance.

The Ombudsman (*Defensor del Pueblo*) continues to play an important role in cases involving allegations of misconduct by public authorities or civil servants. While relatively few of these cases expressly concern discrimination or equal treatment, the Advisory Committee notes with particular interest the Ombudsman's involvement in issues concerning police practices of ethnic profiling, school segregation and denial of health care to migrants (see further below, comments under Articles 6, 12 and 15 respectively). It welcomes the fact that the avenue of redress provided by the Ombudsman appears to be relatively well known, although it regrets that the number of complaints submitted by Roma reportedly remains low compared with the level of discrimination they face.

As is the case for hate-motivated criminal offences (see further below, comments under Article 6), Roma and other groups rarely report discrimination, due inter alia to low awareness of their rights and of the available avenues of redress, as well as to a lack of confidence that taking action will change the outcome. Against this background, the Advisory Committee underlines the particular importance of awareness-raising amongst Roma as to the actions they can take when faced with discrimination, and of ensuring that they are not prevented from accessing justice in such cases due to a lack of financial means.

Recommendations

The Advisory Committee again calls on the authorities to enact comprehensive anti-discrimination legislation. It notes that such legislation could be based on the Bill that was introduced in Parliament in 2011, but not enacted.

The Advisory Committee recommends that, in the absence of a fully-fledged equality body, the status and independence of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin be strengthened. This should include reviewing the current rules according to which the members of the Council who are not civil servants receive no remuneration for their work. It also calls on the authorities to appoint a President of this Council as a matter of urgency. The authorities are moreover encouraged to continuing funding and supporting the Network of Assistance to Victims of Discrimination and, in the absence of alternative dispute resolution mechanisms, to ensure that legal aid is available to victims of discrimination.

The authorities should also step up their efforts to raise awareness among groups most frequently targeted by discrimination of the legislative standards that currently apply and of the avenues of redress available to victims of discrimination, including in the private sector.

Equality data

The authorities have expressed recognition that measures to promote equality can be more effective if designed on the basis of reliable data. They have also indicated that according to the National Statistics

Institute, the collection of data broken down by ethnicity is not excluded under Spanish law. However, technical issues may arise in the case of surveys conducted by the National Statistics Institute, according to the latter, because international standards require that ethnic data be collected on a voluntary basis, whereas its surveys are compulsory. The Institute has expressed concerns that, while compulsory surveys could include optional questions, low numbers of answers to such questions would mean the results would not be representative and might weaken the credibility and reliability of the Institute's work. The Advisory Committee observes that issues such as this were examined in depth in the context of preparations in Europe for the 2010 censuses of population and housing, where it was noted that in order to guarantee free self-identification, compulsory questions on ethnicity may for example include the possibility for respondents to answer "none" or "not declared". The same model could equally be used in the context of other obligatory surveys.

The Advisory Committee notes that in practice, when data providing information on the situation of persons belonging to specific groups is sought in the context of designing effective measures to promote equality in Spain, the authorities refer to research carried out by other bodies such as the Centre for Sociological Research and the *Fundación Secretariado Gitano*. It also notes with interest the on-going work of the Ministry of Health, Social Services and Equality towards drawing up a "Discrimination Map" covering all grounds of discrimination. It welcomes the completion of the first phase of this project and notes that the results of a follow-up study on perceptions of discrimination in Spain were due to be published in early 2014.

The Advisory Committee welcomes the steps taken by the authorities to ensure that measures taken to promote equality are based on objective studies of the existing situation. It nonetheless underlines that the lack of up-to-date and accurate data on the socio-economic and educational situation of persons belonging to national minorities hampers the ability of the authorities to design, implement and monitor targeted measures to promote the full and effective equality of persons belonging to national minorities.

Recommendation

The Advisory Committee encourages the authorities to pursue and expand their efforts to improve practices of obtaining reliable equality data broken down by ethnic or national origin, language, religion and culture, in full respect of the relevant international data protection standards, in order to increase the effectiveness of measures designed to promote the full and effective equality of persons belonging to national minorities.

Promotion of full and effective equality of Roma

Spain remains active in promoting the equality of Roma and has continued to implement policies and programmes to improve the situation of Roma in all fields of daily life. The Advisory Committee welcomes the fact that the National Roma Integration Strategy in Spain 2012-2020 expressly applies not only to Spanish Roma but also to Roma originating from other countries. It notes with satisfaction that an Operational Plan for the Social Inclusion of Roma People 2014-2016 was adopted in April 2014, with input from non-governmental organisations that are members of the State Council for the Roma People (see further below, comments under Article 15). The Advisory Committee welcomes the development of this Plan in consultation with the Autonomous Communities (which have competencies in many of the

fields covered), as well as the clear designation in the Operational Plan of actors responsible for implementing relevant activities in the fields of education, employment, housing, health, social services, equality and non-discrimination and the promotion of Roma culture. Actions to address aspects of gender violence specific to the Roma community are also incorporated in the Operational Plan. In this respect the Advisory Committee notes the particular importance of working with the Roma community to promote increased reporting of gender-violence-based offences. It also notes with interest that the National Roma Integration Strategy in Spain 2012-2020, to which the Operational Plan is intended to give effect in 2014-2016, is based on available equality data in all the relevant fields, and the updating and gathering of new such data are foreseen as part of the Operational Plan. The Strategy moreover includes clear targets as well as a series of indicators by which progress towards achieving these targets can be measured.

The Advisory Committee observes nonetheless that a number of factors may reduce the effectiveness of the Operational Plan for 2014-2016 and the implementation of the National Roma Integration Strategy in Spain 2012-2020 more generally. First, due in part to the lack of a question on ethnic origin in Spanish censuses (see also above, comments with respect to Article 3), no reliable data exist as to the size of the Roma population in Spain or in its various Autonomous Communities. Overall estimates vary by as much as 100%, a discrepancy that makes project-planning difficult and carries with it obvious budgetary ramifications. Second, Roma representatives repeatedly emphasised to the Advisory Committee that little monitoring is carried out of the implementation of the various action plans in favour of Roma, and, to the extent that such monitoring is done, Roma have little involvement in the evaluation process. Third, as regards the Operational Plan 2014-2016 in particular, the Advisory Committee notes that while it refers to numerous programmes and activities in a broad range of relevant areas, these references for the most part remain at an abstract level; few specific actions to be carried out are listed and no indicators included. For this reason, some Roma representatives have expressed the view that the Operational Plan 2014-2016 is a step back from the National Roma Integration Strategy in Spain 2012-2020 that it is intended to implement. Fourth, although mid-term targets for the implementation of the Strategy have been fixed for 2015, it appears from the information provided to the Advisory Committee that little data is yet being gathered in order to monitor progress towards these targets.

The Advisory Committee notes that a number of sources of funding that have regularly been used to support programmes promoting the equality of Roma are identified in the context of the Operational Plan. These include the funds assigned to measures targeting the population more broadly and that will promote the realisation of the Operational Plan, support provided by government departments to relevant activities carried out by non-governmental organisations (notably through sums received via voluntary 0.7% personal income tax allocations, amounting to approximately €7 million in total), agreements between the State and Autonomous Communities as part of the Roma Development Plan, the European Social Fund and other European funds. The Advisory Committee warmly welcomes the indication by the authorities that government funding transferred to Autonomous Communities and municipalities under the Roma Development Plan will increase by €1 million to €1.4 million in 2014. However, it notes with regret that within the overall envelopes identified, funding for the implementation of the various lines of action in the Operational Plan is not clearly earmarked, which may considerably hamper the implementation of these actions in practice and means it is impossible to assess the adequacy of the budgetary resources ultimately allocated. Moreover, many Roma representatives consider the extensive reliance on projects implemented by non-governmental organisations as a sign that the authorities are not taking sufficient responsibility for improving the situation of Roma (see further below, comments under Article 15).

The Advisory Committee is deeply concerned that Roma are being disproportionately affected by budget cuts made to the Spanish welfare system in response to the economic crisis. Roma have been particularly hard-hit by evictions and loss of employment (see further below, comments under Article 15), meaning that Roma who were previously autonomous are increasingly turning to the social protection system for assistance. In parallel, austerity measures taken at all levels of authority, such as cuts in social welfare and the introduction of more restrictive conditions and procedures for accessing such aid, as well as long waiting periods for access to aid, not only impact on individuals who were already reliant on such assistance but also aggravate the situation of those newly in need of it. Cuts in programmes to promote equal access to education as well as cuts in the number of teachers and, in the case of migrant Roma, restrictions in access to health-care also exacerbate this situation. The Advisory Committee acknowledges the severe financial difficulties faced by Spain but stresses the need to ensure that the most marginalised groups in society, which include some parts of the Roma population, are not disproportionately affected by budgetary cuts. Even where intended for the short term only, such cuts may have far-reaching consequences, both direct and indirect, that set back progress achieved by many years and that resonate in the long term.

Recommendations

The Advisory Committee strongly encourages the authorities to continue implementing programmes to promote the full and effective equality of Roma, covering both Spanish and foreign Roma. It calls on the authorities to ensure that such programmes, including those specified under the Operational Plan for the Social Inclusion of Roma People 2014-2016, include clear targets and well defined actions and benefit from adequate, earmarked funding. The authorities must also ensure that the impact of these programmes is effectively monitored, in consultation with representatives of Roma.

It further calls on the authorities to ensure that austerity measures taken in the context of the economic crisis do not disproportionately impact, directly or indirectly, on Roma and to take resolute measures to redress problems of this nature that have already been identified.

“The former Yugoslav Republic of Macedonia”

Adopted on 24 February 2016

Article 4 of the Framework Convention

Legal and institutional framework for the promotion of equal access to rights of persons belonging to national minorities

Present situation

In the absence of a comprehensive strategy for the protection and promotion of human rights generally, the legal and institutional framework for the promotion of minority rights is made up of various components. The 2001 Ohrid Framework Agreement (OFA), given its nature as a peace agreement, established a consociational political system in which the two largest ethnic communities could safeguard their interests and provide specific guarantees for the Albanian community. The OFA and the ensuing legislative measures to promote its implementation continue to be overseen by the Secretariat for the Implementation of the OFA. Since 2008, the Law on the Promotion and Protection of the Members of Communities that are Less than 20% of the Population accords rights to persons belonging to the five other national minorities, and an Agency for the Exercise of Community Rights was

established in 2009. For Roma, access to rights is further dealt with by a Minister without portfolio who is responsible for issues related to the implementation of the Roma Decade, while the adoption of the Roma National Inclusion Strategy has been co-ordinated by the Ministry of Labour and Social Policy. In addition, all persons belonging to national minorities may also avail themselves of the general human rights protection and anti-discrimination mechanisms such as the Office of the Ombudsman and the Commission for Protection against Discrimination (CPD) (see below). While welcoming the variety of institutions that can be turned to for support, the Advisory Committee notes that most persons belonging to national minorities are not only confused by the various pieces of legislation that are applicable to them, but they also have doubts about the professionalism, independence or competency of the respective bodies.

Since its establishment in early 2011, the Commission for Protection against Discrimination (CPD) functions as the main equality body, in line with the 2010 Anti-Discrimination Law. According to information obtained by the Advisory Committee, it received 394 complaints from 2011 until December 2015. The yearly average is slowly increasing but the overall number is still considered by relevant officials to be very low. This is due to fears of secondary victimisation, lack of trust in state institutions, and lack of awareness amongst the public about the CPD's existence and mandate. While agreeing with this assessment, the Advisory Committee further notes serious concerns amongst civil society and minority representatives about the lack of independence of the CPD and about the fact that it can only express non-binding recommendations. Its members from 2011 until the end of 2015 served only part-time for the CPD, while pursuing separate full-time employment, including in government institutions. Its President from 2011 to 2015, for instance, was a State Secretary at the Ministry of Labour and Social Policy, which indeed raises doubts about the CPD's ability during that period to function independently from the government, especially in view of the fact that the majority of complaints it received were related to matters of employment within public institutions. Moreover, it does not have a permanent presence outside of Skopje, which significantly reduces its potential for outreach.

In addition, the Advisory Committee notes with concern that the CPD does not have a Secretariat, which prevents the institution from functioning properly. In addition, it raises concerns with respect to the loss of institutional memory as its members serve for five years only. Moreover, the Advisory Committee observes with concern that a number of opinions provided by the CPD appear to reflect inadequate levels of precision and expertise in their legal analysis. Indeed, in only 10% of the complaints it received the CPD determined that discrimination had taken place. In this context, the Advisory Committee notes that the Anti-Discrimination Law places a large burden on the complainant to prove that discrimination has taken place, asking for submission of "facts and proofs from which the act or action of discrimination can be established", which is not in line with the reverse burden of proof requirement set by the EU Equality Directives which the law intends to transpose. The Advisory Committee has been informed that, as a result, most civil society organisations have decided to disregard the CPD in favour of other institutions, such as the Ombudsman Office which is considered a more efficient body to resolve discrimination-related cases, despite its more limited mandate. In addition, a number of cases have been brought to domestic courts. As of February 2016, there had been nine final decisions establishing that discrimination had taken place in line with the Anti-Discrimination Law, seven of them related to ethnically based discrimination.

The Ombudsman Office continues to play an active role in the protection of human rights; since 2011 it has also taken on the mandate of the country's Preventive Mechanism. The Advisory Committee is pleased to note that the institution is well-known, due among other factors to its six regional offices. The Advisory Committee notes with concern, however, that the Office continues to function without

adequate resources; the budgetary constraints have prevented the filling of vacancies for a number of years. For instance, only one member of staff deals with the increasing number of cases related to discrimination in the public sphere received by the Office, and only one of four Deputy Ombudspersons has been appointed – which critically undermines the effectiveness of the institution. It is further regrettable that the Office is not able properly to engage in human and minority rights promotion and related awareness-raising activities, including in schools (see also Article 12). According to its own assessment, promotional activities have been made possible only due to project-based international funding. In addition, it is of concern to the Advisory Committee that the recommendations made by the Ombudsperson are, according to his Office, not always implemented by the various government bodies and little follow-up has been given to its Annual or Special Reports. Despite its having been set up as an independent and self-governing body, the Ombudsman Office does not have the mandate or resources to function fully in line with the Paris Principles. Having been accorded the status B as a National Human Rights Institution by the International Coordinating Committee in 2011, it actively contributed in 2014 to the drafting of amendments to the Law on the Ombudsman aimed at rendering the institution more effective, yet none of its proposals were reportedly taken into account.

Recommendations

The Advisory Committee urges the authorities to ensure the effective functioning of the CPD as the main equality body by providing it with an adequately staffed and resourced Secretariat so as to enable it properly to deal with complaints falling within its mandate in line with the law. Furthermore, all necessary efforts must be made to ensure full independence, professionalism and integrity of its members.

It further urges them to accord adequate financial and political support to the Ombudsperson by enabling the immediate filling of open vacancies, by according an appropriate budget to enable the proper functioning of the Ombudsman Office in its various capacities, and by promptly and fully implementing its recommendations. Amendments should further be made to the Law on the Ombudsman in order to seek its accreditation as a National Human Rights Institution with status A.

Continued challenges to the effective equality of persons belonging to national minorities

Present situation

The Advisory Committee notes with concern that, in addition to the deficiencies in the functioning of the general human rights and anti-discrimination mechanisms described above, the specific structures available to persons belonging to national minorities for the protection and promotion of minority rights appear also not to function properly. The Secretariat for the implementation of the OFA oversees the implementation of the Agreement's main provisions and ensuing legislation. In addition to promoting interethnic relations and dialogue (see further Article 6), it manages the recruitment of persons belonging to national minorities into public services to ensure their equitable representation and participation (see further Article 15). In the view of most national minority representatives, the OFA Secretariat is mainly concerned with the promotion of rights of the numerically largest minority, which is the Albanian. This is particularly so since 2009, when the Agency was established to deal with the rights of the numerically smaller communities. The Advisory Committee notes with concern reports that the OFA implementation practices appear to disregard individual access to equality and equal opportunities, and it instead favours political considerations. While the interethnic nature of the government coalition has promoted interethnic stability, it appears that access to and the enjoyment of rights of persons belonging to the Albanian minority disproportionately depends on their political affiliation, with no supervision being exercised over the way in which their equitable representation is being promoted.

The Agency for the Exercise of Community Rights functions merely as an Advisory Body to the government, yet without the authority to supervise effectively the implementation of minority rights. There is reportedly often no follow-up given to its recommendations. Moreover, it acts without a budget and receives financial support for its various activities only from international organisations. The Advisory Committee notes in this context the ongoing discussions regarding a possible establishment of a ministry that would combine the functions of the Secretariat for the implementation of the OFA and those of the Agency. A Ministry would be equipped with an inspectorate body and a separate budget to oversee and enforce the implementation of relevant provisions in line with international and national standards. While welcoming the idea of creating such a competent body with the proper authority to promote the implementation of minority rights, the Advisory Committee notes substantial opposition among smaller communities who fear that they would be subsumed into the larger groups without adequate recognition or protection of their specific concerns and needs. Indeed, the Advisory Committee is concerned about the deep sense of inequality it observes among persons belonging to the smaller communities, in particular those that are not explicitly mentioned in the Preamble of the Constitution but merely referred to as “others”. It considers therefore that any future step to promote more effectively the access to rights of persons belonging to national minorities should disengage from the current “categorisation” of national minorities according to their relative size, as this could indeed be considered as implying an inferior status for persons belonging to the numerically smallest or presently undefined minorities. Instead, it should be based on an individual rights approach that promotes effective equality and access to rights of all persons belonging to all national minorities.

In addition, the Advisory Committee is deeply concerned by the persistent inequalities experienced by persons belonging to the Roma minority (see also comments on Articles 12, 14 and 15), whereby women are particularly affected as a result of multiple forms of discrimination. Many of the Roma reportedly remain without personal documents which severely hinders their access to rights in key spheres of daily life. While welcoming the registration of 2,834 Roma individuals in 2012 following concerted governmental and non-governmental efforts with support from the UNHCR, no comprehensive strategy appears to have been developed generally to promote access to personal documents or even a systematic registration at birth through better co-operation between hospitals and local registries, for instance. According to minority representatives, women face particular obstacles in obtaining documents, which often prevent them also from registering the birth of their new-born children, as costly DNA testing reportedly continues to be insisted upon to prove parental relationship when marriage certificates cannot be produced. As a result, some 1,600 individuals are estimated to remain without any identity documents, 400 of them alone in the municipality of Šuto Orizari. The lack of identity documents prevents many Roma from registering their residence and obtaining ownership and property legalisation documents (see Article 15), while a registered residence is a precondition for the issuance of identity documents. A comprehensive approach is thus required in order to break the cycle and enable Roma to establish their legal status and effectively access their rights.

Moreover, there are documented incidents of ethnic profiling at external borders directed primarily at persons belonging to the Roma minority. Repeated independent surveys point to an established practice of not allowing Roma to exit the country, despite having valid travel documents. The Ministry of the Interior confirmed the practice to the Advisory Committee as a procedure that, in an apparent effort to comply with the EU visa-liberalisation agreement, is based on “risk-analysis” and the established profile of so-called “fake asylum-seekers”. This practice reportedly continues despite an increasing number of court decisions that have condemned it and despite the Ministry of the Interior having been ordered to pay compensation to affected individuals. According to officials, the court decisions were prompted by the failure of individual police officers, who have since been reprimanded, rather than the result of a

systematic practice. In addition, the freedom of movement of persons belonging to the Roma minority has been seriously curtailed through the confiscation of their passports. The Constitutional Court ruled in June 2014 that the revocation of passports of citizens who had been forcibly returned from other countries following changes to the Law on Travel Documents in 2014 had been unconstitutional.

Recommendations

The Advisory Committee urges the authorities to address proactively the inequalities experienced by persons belonging to national minorities and to promote their equal access to rights through the establishment of effective and adequately resourced mechanisms for the implementation of minority rights as an integral part of individual human rights.

It further urges them to prioritise the situation of undocumented persons, in particular Roma, by designing and implementing a comprehensive strategy to promote access to identity documents and a systematic and unconditional registration of all new-born children.

Practices of ethnic profiling and other means of ethnically based discrimination must further be discontinued immediately and relevant court decisions implemented without delay.

Measures to promote full and effective equality of persons belonging to national minorities

Present situation

The Advisory Committee regrets that the Anti-Discrimination Law does not expressly mention a duty to promote equality, as recommended in ECRI's General Policy Recommendation 7. Positive measures to eliminate or diminish factual inequality in favour of a particular community or marginalised group are explicitly mentioned in Article 13 of the Law, however, and they shall not be deemed discriminatory. Most of the measures that have been developed, such as the provisions ensuing from the OFA and the mechanisms for the communities that constitute less than 20% of the population, are aimed at overcoming structural inequalities based on ethnic origin. Despite this focus on ethnicity and the relative size of the respective groups in order to identify the corresponding level of rights, no comprehensive system has been set up to collect and analyse equality data that could be used as the basis for positive measures. Given that the last census dates from 2002 and most groups question the accuracy of the data it provides (see Article 3), the Advisory Committee considers that alternative means should be developed to obtain valid and disaggregated information, in line with the right to free self-identification and with due regard to personal data protection standards, on the number and access to rights situation of the various groups in society and persons belonging to them. It has consistently encouraged states to collect data from a variety of sources, in addition to the population census, such as formal or informal housing and school surveys as well as independent research. Quantitative data must in particular be supplemented with qualitative sociological and other studies when the existing statistical data differ from the estimates made by minority representatives.

A new Roma Integration Strategy 2015-2020 has been adopted by the Ministry of Labour and Social Policy focusing on education, housing, health, employment and culture, following a consultation process that also included minority representatives and a number of relevant civil society organisations. Regrettably, however, most of their comments and proposals, such as on education-related matters, were reportedly not taken into account. It further appears that the findings of a review of the implementation of the individual action plans for education, employment, health and housing have not been taken into account in the adoption of the new Strategy. The Advisory Committee notes with concern that a comprehensive and up to date action plan with concrete targets and measures has not

yet been adopted, nor has an earmarked budget been set aside for that purpose. According to minority representatives, measures taken in order to promote Roma integration have been project-oriented and supported mainly with foreign funding. The effectiveness of the measures taken, for instance in the field of education, has been questioned repeatedly because of the absence of comprehensive and disaggregated baseline data, in particular as regards the Roma community. It notes with interest in this context the so-called mapping exercise that commenced in January 2016 to obtain reliable data on the number and access to rights situation of Roma in ten municipalities where they reside in substantial numbers. The Advisory Committee trusts that this exercise and any future follow-up will be conducted in close consultation and co-operation with Roma representatives and in full respect of the right to free self-identification.

Recommendations

The Advisory Committee calls on the authorities to engage proactively in consultations with representatives of national minorities on adequate ways and methodology of gathering qualitative and quantitative equality data on the size of their communities and access to rights for persons belonging to those communities, in order to ensure that comprehensive and reliable data can be used as the basis for more effective measures to promote equality.

Roma representatives should be effectively consulted and included in all discussions and decision-making processes with respect to all strategies and action plans aiming at their better socio-economic inclusion.

An action plan, containing concrete measures and an adequate budget to implement the new Roma Integration Strategy 2015-2020 must further be adopted to fill the gap created by the expiration of the previous action plans in 2011.

United Kingdom

Adopted on 25 May 2016

Article 4 of the Framework Convention

Legal and institutional framework for the promotion of equality of persons belonging to national minorities

Present situation

The Advisory Committee notes that language as a ground for discrimination under the notion of “race” is still missing from the Equality Act 2010, although the UK authorities consider it to be inherent to the notion of ethnic origin. Discussion addressing whether caste should be introduced as an additional ground for equality under the definition of race in the Equality Act continues. It would appear that the UK Government is still evaluating whether to introduce a specific statutory prohibition because discrimination on caste has been already held to fall under the remit of race by courts. Interlocutors from NGOs, however, underlined that the ruling does not provide the legal certainty required because every case must be decided on the individual circumstances, and there is no other case law yet.

The legal framework pertaining to human rights – especially equality and non-discrimination – made further progress between 2011 and 2015, in particular through the adoption of the Public Sector Equality Duty in April 2011 and (Specific Duties) Regulations 2011, which requires public bodies to set

equality objectives and provides for positive discrimination. Specific regulations have been adopted for Scotland and Wales respectively in the context of devolved powers.

The Advisory Committee acknowledges that the situation differs somewhat in Northern Ireland, where the Equality Act 2010 does not apply because the Northern Ireland Assembly has devolved powers in relation to anti-discrimination legislation. In the period under examination, the political focus had been on stabilising and reforming the Northern Ireland power-sharing institutions. The Advisory Committee notes that the political climate prevented progress on unified equality legislation or, alternatively, reform of the current framework to close the existing gaps. The fact that the current race equality legislation in Northern Ireland provides for less protection against discrimination on grounds of colour and nationality than on grounds of race, ethnic or national origins may affect persons belonging to national minorities in particular.

In the Race Equality Strategy, adopted on 10 December 2015, the Northern Ireland Executive committed itself to reviewing the existing legislation during the sittings of the next Assembly following the May 2016 elections, rather than adopting a single, new piece of legislation as is the case in the rest of the UK. This message was reiterated to the Advisory Committee by the authorities. Independent bodies and civil society underlined the importance not only of amending the substance of the law but preferably doing so in a single act.

In Northern Ireland, the statutory duty for employers to determine, even subjectively, employees' background in order to ensure fairness in employment continues to apply. The Advisory Committee continues to consider that this practice impinges on the right to free self-identification of the persons concerned as guaranteed by Article 3(1) of the Framework Convention. In its previous opinion, it had called for careful monitoring of the mechanism, measuring it against progress made in achieving the original purpose of the legislation, which is, promoting and securing equality of opportunity and fair participation in employment for members of the Catholic and Protestant communities. The Advisory Committee also emphasised that monitoring should be extended to cover ethnic origin and nationality. Interlocutors of the Advisory Committee indicated that, although the situation in the workplace has much improved, the statutory requirement retains its value and relevance today. They had also recommended the authorities to introduce monitoring of nationality and ethnic origin.

Several interlocutors of the Advisory Committee criticised the 2012 reform of legal aid (the Legal Aid, Sentencing and Punishment of Offenders Act 2012), which limited free legal aid for representation to the highest priority "discrimination-in-employment claims" before the Employment Appeals Tribunal. The introduction the following year of fees for claims made to employment tribunals or the Employment Appeals Tribunal, and in particular higher fees for discrimination claims, made these claims drop by approximately 80%; those for racial discrimination dropped 61%. These rules apply in England and Wales, whereas in Northern Ireland legal aid has generally been available for initial advice and assistance, but not for representation. Scotland continues to provide assistance by way of representation in discrimination cases before the Employment Tribunal. While the original aim was to make the claim system more sustainable, in view of the results the authorities indicated they were reviewing the current rules.

The Advisory Committee learned with concern that budgetary cuts affecting the independent equality and human rights monitoring bodies have continued across the UK. The Equality Human Rights Commission (hereinafter EHRC), however, did not consider them to have affected its core mission or functions and not to be disproportionate when compared with the cuts to the rest of government. The Scottish EHRC and the Equality Commission for Northern Ireland (ECNI) expressed similar positions. The

Northern Ireland Human Rights Commission (NIHRC) was somewhat less affected, since it is directly funded by the central government.

Recommendations

The authorities should amend the statutes to include language and caste as grounds of discrimination under the definition of race.

In the absence of progress, the Northern Ireland Assembly should adopt robust and comprehensive single equality legislation or otherwise strengthen racial equality in Northern Ireland, and harmonise protection across the UK.

Bearing in mind that the employers' duty to determine the community background of the workforce impinges on the right to free self-identification, as protected by Article 3(1) of the Framework Convention, the Advisory Committee reiterates its call for careful monitoring of this duty measured against progress made to achieve fairness in the workplace, and its call to introduce monitoring of the nationality and ethnic origin of the workforce.

The Advisory Committee further calls on the authorities to review the rules applicable to legal aid and fees in employment discrimination cases to ensure effective access to justice for persons belonging to national minorities.

Measures to promote the full and effective equality of persons belonging to national minorities

Present situation

The Advisory Committee acknowledges that in England, Scotland and Wales the equality legislative framework has put in motion a thorough process of setting objectives and focusing integration strategies on disadvantaged communities instead of race and ethnicity. In addition, except in England, race strategies have also been adopted. Equality legislation also applies to persons belonging to national minorities because they are covered by the notion of race as one of the protected characteristics. While not going into specific details for each nation, the Advisory Committee considers that the 2015 assessments on equality carried out by the respective executives, as well as the EHRC report and civil society sources, allow a broad-brush picture of national and ethnic minorities' situation. Overall, persons belonging to ethnic minorities are in a better place in reducing educational gaps, but challenges remain in relation to higher levels of unemployment, low wages, underemployment, worse health status and access to care, high levels of poverty,, low levels of English language knowledge and inadequate political representation. Moreover, these persons are often victims of hate crimes. Gypsies, Travellers and Roma continue to be the group suffering significantly more from discrimination in all these fields, including education, particularly in England.

Integration policies have shifted their emphasis from racial inequalities to socio-economic status and poverty, and have been targeted at disadvantaged communities instead of focusing on race and ethnicity as guiding criteria. Another common trait of integration policies is the enhanced role of local authorities and individual citizens, who are encouraged to take ownership, while the central government gives the guidelines and financial support for local projects. The Advisory Committee is aware that progress has been achieved through integration measures addressing disadvantaged people, for example, in educational achievement (see Article 12). Nevertheless, the Advisory Committee also notes that in 2015 the Prime Minister articulated a new approach, Vision 2020, specifically targeting integration and opportunities of "Black and minority ethnic" (BME) communities, seeking to increase by 20% their presence in employment, university, apprenticeship and police by 2020. While it is too early for an assessment of Vision 2020, this policy appears to go back to an approach singling out individual

ethnic groups to maximise the effectiveness of measures and is apparently motivated by the persisting gaps faced by persons belonging to national and ethnic minorities.

In March 2016, the Scotland Executive adopted the Race Equality Framework for Scotland 2016-2030, which addresses remaining disparities for persons belonging to minorities, such as community cohesion and safety; participation and representation; education and lifelong learning; employability, employment and income; and health and home. While acknowledging the relevance of the strategy, interlocutors of the Advisory Committee highlighted the need for it to be completed by prioritising the most acute issues (hate crime, employment and education) with specific action plans and resource allocation. They also expressed concerns that, generally, a disconnection persists between policies, which head in the right direction, and those who deserve them the most, whom the policies somehow fail to reach. The measures are also unevenly implemented by local authorities and there is scarcity of resources.

In Wales, the Equality Objectives 2016-2020 build upon the 2014-2015 report on equality outcomes and continue to address issues such as unemployment and pay gaps, low representation in political life and poverty, issues which affect ethnic minority people. The Executive has also established a Wales Race Forum, to engage and understand the key issues and barriers facing BME communities, and a Faith Communities Forum, bringing together representatives of different religious groups to discuss key interfaith issues.

The Advisory Committee is also aware that the Northern Ireland Executive recently adopted the Racial Equality Strategy 2015-2025. Responding to stakeholders criticising the lack of an action plan detailing goals, actions and a timeline, the authorities expressed awareness and explained that this was the task of the Racial Equality Subgroup. Civil society interlocutors of the Advisory Committee reiterated that the Executive should go further than committing themselves and actually enact an action plan.

The Advisory Committee appreciates the various authorities' efforts to build up and renew strategies on the basis of data assessment, with the goal of achieving more equality for persons belonging to ethnic minorities. But it also shares the opinion of many stakeholders that strategies need effective implementation and allocation of resources. From this perspective, austerity measures may have an impact on implementation. While the picture of past budgetary cuts is mixed, in a context of strained resources and increasing needs in fulfilling existing legal requirements or implementing new strategies, the government needs to strike a fair balance between budget cuts and provision of resources to ensure greater equality and compliance with the objectives it sets for itself.

Recommendation

The Advisory Committee calls on the central and devolved authorities to ensure that policy documents such as integration and race strategies are complemented by appropriate action plans and adequate resources to ensure effective access to rights for persons belonging to national and ethnic minorities, in particular as regards the Northern Ireland Racial Equality Strategy 2015-2025.

Gypsies, Travellers and Roma

The Advisory Committee notes that, with the exception of England, several policy documents specifically addressing the situation of Gypsies, Travellers and Roma have been or are going to be adopted in the various parts of the UK and will be analysed in more detail under Article 5 and other relevant provisions. Unlike most other EU member states, the UK opted not to adopt a National Roma Integration Strategy, but a 2012 Progress Report published by the government provided for 28 commitments covering various fields, such as education, health care, housing, hate crime and access to employment. Criticism was

expressed by stakeholders that the commitments were cosmetic and reductive, in particular regarding the issue of availability of caravan pitches, which remains critical across the whole country, and that an overall policy framework was still missing. In its monitoring process, the European Commission found, *inter alia*, that halting sites for Gypsies and Travellers and housing for Roma remained a challenge all over the UK and efforts needed to be scaled up and implemented as part of an integrated approach.

Whereas Gypsies, Travellers and Roma in England are considered to be protected under the general equality framework (see above), the Scottish Government included a specific outcome in the Equality Outcomes and Mainstreaming Report (2013), and it has been working through the Gypsies and Traveller Strategy Development Group to develop an overarching strategy and action plan for Gypsies/Travellers. Such an overall strategy, to be published after the 2016 elections, is expected to cover a range of issues including education, health and employment, but not accommodation.

The Advisory Committee welcomes the fact that Wales was the first to adopt in September 2011 a policy document, “Travelling to a better future: a Gypsy and Traveller framework for action and delivery plan”, which was assessed in March 2016. While progress has been achieved in a number of areas, such as housing, education, health and participation, the Executive acknowledges that challenges remain for the needs of Roma communities, in particular as regards education.

Collection of equality data

The Advisory Committee welcomes the overall, broad collection of disaggregated data on national and ethnic minorities in the UK, which is regularly analysed and put to use to inform policy-making. It notes nonetheless that in England there is no obligation to collect data specifically dealing with Gypsies, Travellers and Roma, apart from the 2011 census. This may prevent the adjustment of policies addressing the situation pertinent to this minority, preventing access to services. Moreover, in England there is a lack of monitoring on the basis of ethnicity with respect to the National Health System. Scottish authorities, on the other hand, improved data gathering and facilitated access to data to develop evidence-based policy, and Wales collects data on Gypsies and Travellers.

It is of concern to the Advisory Committee that, unlike the rest of the UK, there is still no monitoring of ethnic data in Northern Ireland. When asked, the authorities replied that for a long time ethnic minorities were numerically small. Data collection is mainly done by ECNI within its thematic reporting work, but there was a general acknowledgment by stakeholders that disaggregated data are needed to establish baselines and inform the development of evidence-based policies. So far, only the Department of Health is developing proposals for ethnic monitoring. The Advisory Committee is concerned that the Racial Equality Strategy 2015-2025 still does not envisage ethnic data gathering as an objective; but it welcomes the Office of the First Minister and Deputy First Minister’s acknowledgement that robust ethnic monitoring is needed and also welcomes that Office’s intention to examine how it should be introduced.

The Advisory Committee considers that the regular gathering of reliable and disaggregated equality data related to the number and situation of persons belonging to national and ethnic minorities allows for a deeper understanding of the specific challenges faced by members of the various groups. Such data gathering, by means of a census, studies or other tools, also helps in the adoption and implementation of effective minority protection and equality promotion policies.

Recommendations

The authorities in England should start collecting disaggregated data on Gypsies, Travellers and Roma, and should devise policies targeting the specific needs of persons belonging to those groups.

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The authorities should prioritise integrating the collection of disaggregated equality data on the situation of persons belonging to national and ethnic minorities into the practices of all relevant departments and agencies in Northern Ireland as a means to adopting and implementing effective minority protection and equality promotion policies.