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Fourth Opinion on Hungary
adopted on 25 February 2016

SUMMARY

Hungary has continued its vigorous efforts to develop policies designed to protect national minorities. The new Fundamental Law (Constitution) adopted in 2011 enumerates a broad catalogue of rights of persons belonging to national minorities (in Hungarian terminology: "nationalities"). Detailed provisions defining the rights of national minorities are contained in ordinary legislation, such as the cardinal Act on the Rights of Nationalities, the Act on the Election of Members of Parliament and the Act on Electoral Procedure, the Act on National Public Education and the Act on National Tertiary Education, adopted in 2011-2013. In spite of the good intentions, these rapid changes have resulted in some minority organisations experiencing insecurities with their implementation.

Most national minority representatives report an overall respectful attitude prevailing between the majority and most minority groups. Efforts of the authorities to promote minority cultures and education, together with particular steps taken to strengthen representation of national minorities in parliament and through the national minority self-governments, are widely recognised and appreciated.

The system of human rights protection has undergone major changes following the adoption of the Act on the Commissioner for Fundamental Rights, who is assisted by a Deputy Commissioner on the rights of "nationalities." Regrettably, the competences and the freedom to act of the Deputy Commissioner are restricted, limiting the possibility of the new office holder to undertake a more proactive role in defence of the rights of persons belonging to national minorities.

Notwithstanding the authorities' efforts, xenophobic and intolerant attitudes persist within Hungarian society, in particular against the Roma. There have been reports of physical attacks against the Roma in recent years. In the political arena, extremist movements and parties continue to spread prejudice and hate speech against the Roma, with the Internet becoming the principal medium for dissemination of anti-Gypsy and anti-Semitic rhetoric. The susceptibility of a significant part of society to openly xenophobic and discriminatory rhetoric is a source of grave concern.

Roma continue to suffer systemic discrimination and inequality in all fields of life including housing, employment, education, access to health and participation in social and political life. According to evidence collected by the authorities, segregation of Roma school children has become more widespread in recent years. Alarming, discrimination of Roma children has deepened, in particular as a result of the approach of "benevolent segregation" promoted by the authorities by which Roma children are expected to "catch up" in separate Roma classes before their supposed inclusion in the mainstream education.

Although the legislation provides a high level of protection of minority languages, in practice they are very rarely used in public affairs. In particular the use of minority languages in relations with administrative authorities is infrequent, and display of topographical indications is scarcely used in practice.

Issues for immediate action:

- promote tolerance and respectful attitudes amongst the majority population; bolster efforts to combat manifestations of intolerance, racism, xenophobia and hate speech present in Hungarian society including in the media and the political arena and monitor the situation more effectively; investigate and apply adequate sanctions when necessary;
- ensure that the Commissioner for Fundamental Rights is granted all the support needed to continue carrying out his role effectively, particularly as regards the enforcement of recommendations with a view to strengthening the Commissioner's competences; continue to make available the resources needed to operate efficiently and independently; reinforce the competences of the Deputy Commissioner responsible for the protection of the rights of nationalities by empowering the office holder to undertake investigations on the Deputy's own initiative;
- make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by the Roma; improve, in close consultation with Roma representatives the living conditions, access to health services and employment of the Roma; take necessary measures, as a matter of urgency and without further delay, to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy other shortcomings faced by Roma children in the field of education; ensure that Roma children have equal opportunities for access to all levels of quality education, in particular by preventing placement in "catching-up classes"; take decisive measures to prevent children from being wrongfully placed in special schools.

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I KEY FINDINGS

Monitoring process

1. This fourth cycle Opinion on the implementation of the Framework Convention by Hungary was adopted in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the fourth [State Report](#), submitted by the authorities on 6 March 2015, other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Budapest and Pécs from 7 to 11 December 2015.

2. The Advisory Committee welcomes the authorities' overall constructive and co-operative approach towards the monitoring process and the considerable assistance provided by them before, during and after the 4th cycle visit. The third cycle Opinion was translated into the Hungarian language and published promptly. The fourth State Report containing comprehensive and valuable information was submitted following extensive consultations and with the significant contribution of representatives of national minorities. In addition, the Advisory Committee received additional written information from representatives of some recognised minority groups, groups seeking recognition and civil society representatives. The Advisory Committee notes however with regret that, unlike what was put in place after two prior monitoring cycles, no follow-up dialogue was organised in Hungary after the last monitoring cycle was concluded. Such an omission was principally due to a very dynamic and thorough restructuring of institutions responsible for formulating and conducting national minority policy during the years which followed the adoption of the Advisory Committee's third Opinion and the Committee of Minister's subsequent Resolution. Nonetheless, such an event would have been a useful opportunity for discussion of the Opinion and the Committee of Ministers' recommendations, as well as more generally of developments affecting national minorities and policies implemented to address their concerns.

3. The Advisory Committee looks forward to continuing its dialogue with the authorities of Hungary as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt. It also invites the authorities to consider translating the present Opinion and the forthcoming Committee of Ministers' Resolution into the Hungarian language, and to disseminate it widely among all relevant actors. The Advisory Committee considers that, given the multitude and depth of changes to the institutional environment in which national minorities function, a follow-up discussion to review the observations and recommendations made in the current Opinion would be beneficial to all stakeholders.

General overview of the present situation

4. Hungary has continued its vigorous efforts to develop policies designed to protect national minorities. During the current monitoring cycle, significant changes have been

introduced in the legislation and in the institutional arrangements affecting national minorities. In April 2011, the Hungarian National Assembly adopted a new Fundamental Law (Constitution). The Fundamental Law stipulates in its preamble that “the nationalities living with us form part of the political community and are constituent parts of the State” and that Hungary shall promote and safeguard the languages and cultures of nationalities living on its territory. Article XXIX of the Fundamental Law goes on to enumerate in Article XXIX a broad catalogue of rights.¹

5. Following the adoption of the Fundamental Law, the cardinal Act² CLXXIX on the Rights of Nationalities was adopted in December 2011, replacing the Act on the Rights of National and Ethnic Minorities of 1993. Neither the Fundamental Law nor the cardinal Act use the old terminology of “national and ethnic minorities” but speak of nationalities.³ The Act replicates from the previous legislation an unchanged list of recognised groups. These are: Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbians, Slovaks, Slovenians and Ukrainians.

6. The possibilities of participation of representatives of national minorities in the legislative process have been significantly improved with the adoption of the Act CCIII of 2011 on the Election of Members of Parliament (Electoral Act), Act XXXVI of 2013 on Electoral Procedure (Electoral Procedure Act) and Act XXXVI of 2012 on the National Assembly (National Assembly Act). Following the elections of 2014, all recognised minorities are represented in the National Assembly by elected nationality advocates, whose prerogatives are that of full members of the Assembly with the exception to the right to vote. While welcoming this development, the Advisory Committee notes that the rapid process of ethnicisation can lead to divisions in society.

7. New legislation has also been adopted to reform the functioning of local self-governments and by extension the nationality self-governments (Act CLXXXIX on the Local Governments of 2011), the rules of economic management of nationality self-governments (Act CXCV on Public Finances of 2011), education (Act CXC on National Public Education of 2011 and Act CCIV on National Tertiary Education of 2011), media (Act LXXXII on the Amendment of Certain Acts on Media of 2010, Act CLXXXV on Media Services of 2010). All of these changes, which have been adopted in a very short period of time, have significantly reformed Hungarian

¹ Article XXIX: “(1) Nationalities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues. (2) Nationalities living in Hungary shall have the right to establish their self-government at both local and national level. (3) The detailed rules relating to the rights of nationalities living in Hungary, the nationalities, the requirements for recognition as a nationality, and the rules for the election of the self-governments of nationalities at local and national level shall be laid down in a cardinal Act. A cardinal Act may provide that recognition as a nationality shall be subject to a certain length of time of presence and to the initiative of a certain number of persons declaring to be members of the nationality concerned.”

² Cardinal laws in the Hungarian legal system and subsequent amendments modifying them have to be approved by a two-thirds majority of the parliament.

³ The Advisory Committee, when referring to a specific provision of Hungarian legislation, or when quoting directly from government sources will use the term “nationalities”. In all other contexts, in particular when generally referring to minority rights, it will use the terminology of the Framework Convention and refer to “national minorities”.

legislation and institutions, obliging those concerned to adapt quickly to a rapidly changing institutional environment. This has created concerns and insecurity among persons belonging to national minorities. On the other hand, securing detailed legislative provisions in the “cardinal legislation” has for better, for worse, solidified the legislative framework. Concerns have been raised, including by the Venice Commission, about difficulties in the context of possible future amendments, in particular as regards the qualified majority that will be required to amend the Act.⁴

8. The change of the legislative landscape was accompanied by a reform in the executive branch of power. The main body responsible for policy development and implementation with respect to national minorities became, following the parliamentary elections of 2010, the Ministry of Public Administration and Justice, and from 2012, the Ministry of Human Capacities (MHC). The MHC is responsible for the development of education at all levels (from preschool to tertiary education), cultural policy as well as the operation of the social and health-care system. Furthermore, the ministry is responsible for harmonisation of the planning and implementation of policies relating to the operation of local and national minority self-governments. It has to be noted, however, that the overarching governmental Nationality Policy Strategy 2014-2020, which has been under consideration for a considerable time, has not been adopted at the time of the adoption of this Opinion.

Assessment of measures taken to implement the third cycle recommendations for immediate action

9. Measures undertaken to implement recommendations for immediate action have been particularly successful as regards representation of national minorities in parliament. The new Electoral Act and the Electoral Procedural Act created preferential conditions for representatives of nationalities standing in parliamentary elections. Under the mixed electoral system, 106 seats are contested in single-member constituencies elected in a one-round system while a further 93 seats are allocated through a nationwide proportional system among lists which have cleared the 5% threshold. The Law provides an exception for lists of national minorities, which in addition to not having to pass the 5% threshold have the possibility to obtain one preferential mandate per minority, provided its list obtains a quarter of the vote required for a mandate from a political party list. Should the minority list not reach the number of votes required to win a seat, the most successful candidate on that list still enters the parliament as a “nationality advocate”, entitled to access documents, participate in its work both in the committees and in the Chamber, to take the floor and to propose amendments. This system, which was introduced into the Hungarian legal system in 2011, was tested for the first time in the 2014 elections, and resulted in the election of 13 “nationality advocates”, as none of the minority electoral lists gathered the necessary number of votes required to obtain a seat.

10. The authorities have taken appropriate measures to investigate racially motivated attacks of 2008-2009 which led to six deaths and multiple life-threatening injuries among Roma. The perpetrators have been brought to justice and heavy sanctions were imposed on the criminals responsible, ranging from life imprisonment for the three direct perpetrators to thirteen years’ imprisonment for an accomplice. These sentences were upheld at different

⁴ See Opinion on the Act on the Rights of Nationalities of Hungary, adopted by the Venice Commission at its 91st Plenary Session (Venice 15-16 June 2012), doc. Ref. : CDL-AD(2012)011 §85

levels of the appeal procedure all the way to the Supreme Court, which confirmed them in its final and irrevocable ruling in January 2016.

11. Attacks against the Roma have continued in recent years. In the political arena, the largest opposition party, *Jobbik*, continued its campaign of prejudice and hate speech against the Roma, and the Internet has become the principal medium for dissemination of anti-Gypsy and anti-Semitic rhetoric. Although remedies against on-line hate speech exist and have been occasionally used, overall the Hungarian-language social media are rife with offensive content. Extremist right-wing movements continue to organise intimidating marches through Roma settlements harassing their residents. The susceptibility of a significant part of society to openly xenophobic and discriminatory rhetoric is a source of grave concern.

12. Roma continue to suffer systemic discrimination and inequality in all fields of life including housing, employment, education, access to health and participation in social and political life. According to evidence collected by the authorities, segregation of Roma children in recent years has become more widespread. Alarming, discrimination against Roma children has deepened, in particular on account of the concept of “remedial segregation”, promoted by the authorities, according to which Roma children are expected to “catch up” in separate Roma classes before inclusion in the mainstream education, which never happens.

Assessment of measures taken to implement the further recommendations from the third monitoring cycle

13. The media reform of 2010, which professed to introduce “balanced coverage” and which made content providers responsible for the comments posted on their websites, has not contributed to elimination of stereotypes or hate speech in broadcast and online media. On the contrary, new legislation has been successfully used in the courts by *Jobbik*, which mastered the technique of demanding that its point of view be portrayed in the name of “balanced coverage”. The legal requirement that a clear distinction be made between information and commentators’ opinion has also allowed parties like *Jobbik* to successfully argue, even in the Supreme Court, against branding them in news programmes as “a far-right party” as it does not use such terminology itself and any such comment constitutes a subjective opinion. The concept of balanced coverage was extensively criticised by the European Commission,⁵ the OSCE,⁶ the Venice Commission⁷ and journalists’ organisations as a potential threat to freedom of expression. Openly racist, xenophobic, anti-Gypsy and anti-Semitic content continue to be widely disseminated, particularly on the Internet.

14. The adoption of the new Act on the Rights of Nationalities and their recognition as constituent parts of the state has been followed by a significant increase of resources for the cultural activities of national minority organisations. The Nationalities’ Self-Governments, which are responsible for disbursement of funding and the organisation of cultural activities, find it difficult at times to comply with administrative and financial regulations owing to their limited capacity, experience and expertise. Greater efforts are required to assist self-

⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//en>.

⁶ www.osce.org/fom/75990.

⁷ [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)015-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)015-e).

governments in managing the available funding in order to maximise efficiency and prevent possible abuse and misappropriation of funds.

15. In the period under review, Hungarian public television has continued to produce and disseminate programmes in languages of the 13 recognised national minorities. However, it has to be noted that the changes to the media law, accompanied by technological changes (digital switchover was completed in Hungary in 2013), led to discontinuation of some minority language programming as new formats and programmes were being developed. While the availability of the minority language TV programming online has made the issue of timing of broadcasts less relevant, the Advisory Committee notes nonetheless, that frequent changes in the broadcasting times and the inconvenient scheduling of some programmes have had a detrimental effect on the number of viewers. Introduction of a *Pillér* programme broadcast on Sunday afternoons produced in Hungarian and discussing issues affecting the national minorities living in the country is to be welcome as it bridges the linguistic divide and familiarises the majority public with minority concerns.

II. ARTICLE-BY-ARTICLE FINDING

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Present situation

16. The Advisory Committee notes that with the adoption of the new Fundamental Law and the Act on Nationalities, the terminology used within the domestic legal order in Hungary departed from the commonly established terminology of “national minority” as used in the Framework Convention. The definition in Article 1(1) of the Act specifies that “all ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities”. The Act also states in its Preamble that “every citizen forming part of one nationality or another has the right to freely declare and preserve their identity [...]”.⁸ Furthermore, Article 170(1) of the Act explicitly provides that “[t]he effect of this Act shall extend to Hungarian citizens residing in Hungary and belonging to a nationality as well as to the communities of these individuals”.

17. The Advisory Committee notes that the application of the Act is clearly restricted to Hungarian citizens. The Advisory Committee shares the Venice Commission’s assessment that the restriction of enjoyment of minority rights to citizens only departs from recent practice of minority protection in international law and recalls that in its Report on non-citizens and minority rights⁹ the Venice Commission observed that “[c]itizenship should therefore not be regarded as an element of the definition of the term “minority”, but it is more appropriate for the States to regard it as a condition of access to certain minority rights”, and it found it appropriate to “encourage those States which have adopted constitutional provisions and/or entered a formal declaration under the FCNM restricting the scope of protection for minorities to their citizens only, to consider, where necessary, the possibility of extending on an article-by-article basis, the scope of protection of the rights and facilities concerned to non-citizens”.

18. Furthermore, the Advisory Committee regrets the application by Hungary of the criterion of citizenship for access to the protection afforded by domestic legislation, and by extension to the Framework Convention, and considers that such a step is not in line with the current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities. The Advisory Committee indeed considers that, while citizenship may be a legitimate requirement in fields such as representation in parliament, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.

⁸ “[E]very citizen forming part of one nationality or another has the right to freely declare and preserve their identity”, [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2012\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2012)014-e).

⁹ CDL-AD(2007)001, §144, Adopted by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006).

19. With respect to persons belonging to groups other than the 13 recognised national minorities, the Act on Nationalities¹⁰ replicates the conditions and the procedure for recognition as an ethnic group in Hungary existing under earlier legislation.

20. In this context, the Advisory Committee notes that persons belonging to the Bunjevci community have repeatedly sought recognition as a separate ethnic group, and not as a part of the Croatian national minority with which they are amalgamated. An initiative launched in 2006 was rejected following an opinion given by the Hungarian Academy of Sciences, principally on the ground that the Bunjevci are a part of the Croatian minority with which they share a linguistic affinity. The representatives of the Bunjevci, for their part, emphasise their shared perception of belonging to a group which is different from the Croat population by virtue of its culture and history, and the need to preserve that culture and history. The latest petition of the Bunjevci gathered the required 1,000 signatures and was submitted in 2011 to the National Assembly, only to be rejected again.

21. The Advisory Committee considers that it is not its role to make pronouncements on recognition or otherwise of any particular group, given the lack of definition of the term “national minority” in the Framework Convention itself, and provided that domestic criteria are applied in a non-discriminatory manner. It notes however that the complex situation, with linguistic proximity not coinciding with a clearly held ethnic identity, calls for an open and flexible approach to the scope of application of the Framework Convention. The Advisory Committee wishes to reiterate its view that the application of the provisions of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority or the existence of specific legal status as a group.

Recommendations

22. The Advisory Committee considers that the authorities should favour a flexible and open approach concerning the scope of application of the Framework Convention. It invites the authorities to examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not afforded the protection offered by the Act on the Rights of Nationalities, including non-citizens where appropriate, in the application of the Framework Convention, in particular as regards their linguistic and cultural rights.

23. The Advisory Committee reiterates its call on the authorities to pursue an open, dialogue-based approach in relations with persons and groups having expressed an interest in the protection provided by the Framework Convention, and encourages them to take due account of the principle of free self-identification laid down in Article 3 of the Framework Convention.

¹⁰ Article 148 § (3) If a nationality other than those listed in Appendix No. 1 wishes to verify that they meet the relevant conditions, minimum one thousand electors forming part of that nationality may initiate that the nationality be declared an ethnic group native to Hungary. The relevant signature collection forms shall be submitted to the Chair of the National Election Committee. The procedure shall be governed by the provisions of the Act relating to the initiation of national referenda, except as set forth in paragraphs (4) and (5).

Register of nationality voters

Present situation

24. The Advisory Committee recalls that elections to national minority self-governments have been a distinctive feature of the protection and promotion of minority rights in Hungary for almost twenty years. Already in 2005, amendments were adopted to address problems relating to the election procedure of minority self-governments and “registers of minority voters” were created.

25. Following changes to the electoral system, particularly the adoption of the Act L of 2010 on the Election of Local Government Representatives and Mayors, the Act CCIII of 2011 on the Election of Members of Parliament and the Act XXXVI of 2013 on Electoral Procedure, voters can register as “a nationality voter” which entitles them to vote for the list of their nationality in parliamentary elections or for national minority self-governments elected at the municipal and regional levels simultaneously with the municipal and regional councils. Representatives of national minorities have pointed out to the Advisory Committee that registration as “a nationality voter” for parliamentary elections did not extend automatically to local elections held later in the same year, which might have confused some voters who might not have registered separately for the latter, thus depriving themselves of the right to choose nationality self-governments. The Advisory Committee welcomes the fact that a recommendation made by the Venice Commission and the OSCE/ODIHR, in their Joint Opinion on the Act on the Elections of Members of Parliament of Hungary,¹¹ was duly taken into account and the deadlines for requests for an inscription in the register of nationality voters were extended until the day before the day of voting.¹² In this context, the Advisory Committee recalls the importance of the right to self-identification¹³ and of international standards on personal data protection¹⁴ when establishing and using the registers of nationality voters.

26. The Advisory Committee welcomes the information gathered from the representatives of national minorities during its visit that no major problems in connection with the registers of nationality voters were reported during the voting in the parliamentary elections of April 2014 and the local elections of October 2014.

Recommendation

27. The Advisory Committee encourages the authorities to continue to ensure that principles of self-identification and respect for international standards on personal data protection are adhered to during future elections. The authorities should also ensure that all citizens are informed in due time about the procedures and deadlines for registration as a national minority voter.

¹¹ See CDL-AD(2012)012, §49, Adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st plenary session (Venice, 15-16 June 2012).

¹² See Sections 85 and 94 of Act XXXVI of 2013 on Electoral Procedure.

¹³ See the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

¹⁴ See the Committee of Ministers’ Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

Data collection

Present situation

28. The results of the Population Census which was organised in Hungary in October 2011 were published in March 2013. The Advisory Committee welcomes that the respondents were allowed to indicate more than one ethnic affiliation¹⁵ or more than one language,¹⁶ or choose not to answer some or any of the questions. The census questionnaires contained, in addition to Hungarian and the ethnicities and languages of officially recognised national minorities, options of answers for Arabic, Chinese, Russian and Vietnamese as well as boxes for “other”, with space left for inscription by the respondent. The Advisory Committee notes that national minority self-governments were consulted on the specific wording of these questions and that census forms and explanatory notes were translated into the languages of all national minorities, as well as to English and French. Respondents who filled in the census questionnaire online could choose from an open-ended scroll-down menu of national minorities or to inscribe their own answer. The inclusion of two questions on ethnicity and two questions on language made the possibility of indicating multiple ethnic affiliations and multiple languages more obvious than in the previous census where single questions were used. This change is welcome.

29. According to the census results,¹⁷ of the 9,937,628 respondents, the number of persons who declared to belong to one of the recognised nationalities exclusively or in conjunction with another ethnic affiliation was: Armenians - 3,571, Bulgarians - 6,272, Croats - 26,774, Germans - 185,696, Greeks - 4,642, Poles - 7,001, Romanians - 35,641, Roma - 315,583, Ruthenians - 3,882, Serbians - 10,038, Slovaks - 35,208, Slovenians - 2,820 and Ukrainians - 7,396. Altogether, according to the census data of 2011, nearly 6% of the population of Hungary (644,524 persons in total) identify with one or more recognised national minority (nationality).

30. The Advisory Committee, while fully recognising the right of each person to remain silent on the question of ethnic affiliation, notes that nearly 1.4 million persons,¹⁸ constituting about 14.1% of the residents of Hungary, chose not to indicate any national affiliation. The Advisory Committee emphasises that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply to the question on ethnic origin is one to be appreciated solely by the persons being questioned. That being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and promote their identity. However, the census cannot be considered as the only indicator of their number when implementing policies and measures protecting minorities. This is especially the case in a context such as that of Hungary where a number of rights, in particular to set up national minority self-governments, are dependent on the census-based data.

¹⁵ Question 34: “Which nationality do you feel you belong to?”; question 35: “Do you think you belong to another nationality in addition to what you marked above?”.

¹⁶ Question 36: “What is your mother tongue? (Please mark two answers maximum!)”; question 37: “In what languages do you usually speak with family members or friends? (Please mark two answers maximum!)”.

¹⁷ See State Report pg. 8 ,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f28a9>.

¹⁸ Idem, pg. 7.

31. The Advisory Committee notes that, in accordance with the Nationality Act, census data was used as a precondition for the organisation in 2014 of national minority self-government elections at the municipal level. In accordance with Section 56 (1) of the Act¹⁹ such elections were organised “if the number of individuals forming part of the given nationality in the locality reaches thirty according to the data [...] provided in response to the questions of the latest census regarding nationality affiliation.” According to representatives of national minorities this connection was not made sufficiently clear prior to the census, and some respondents were not aware of the consequence of remaining silent on the question of ethnic affiliation.

32. In spite of these shortcomings, the Advisory Committee notes that the number of persons declaring affiliation with an ethnic group (or groups) rose significantly²⁰ from 442,739 in the 2001 census to 644,524 in 2011. The most significant rise has been registered with regard to Roma (from 205,720 in 2001 to 315,583 in 2011), which is attributed to active involvement of Roma enumerators and an awareness campaign “Colourful Hungary” that preceded the census. These initiatives are very commendable. It has to be noted, however, that according to widely shared estimates, the number of Roma living in Hungary is much higher, probably oscillating around 700,000, as acknowledged also by the State Report.²¹

33. Persons declaring the Bunjevci ethnic identity were entitled to do so, in line with the possibility afforded to everyone to inscribe any ethnicity. However, it is to be noted that declarations of the Bunjevci ethnicity were aggregated with declarations of the Croatian ethnicity. The Advisory Committee considers that such methodology applied to interpret the data collected during the census is not in conformity with the principle of free self-identification, as provided in Article 3 of the Framework Convention.

Recommendations

34. The authorities should undertake awareness-raising activities among persons belonging to national minorities well in advance of the next census, in co-operation with minority representatives so that the maximum number of persons give an informed and free reply to the questions relating to their national and ethnic identity and knowledge and/or use of languages. These awareness-raising activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about national safeguards and international standards on the protection of personal data.

35. While processing and interpreting data on ethnic affiliation the authorities are asked to take due account of the principle of free self-identification and the possibility of multiple identification as laid down in Article 3 of the Framework Convention. The Advisory Committee invites the authorities to complement data collected in the census with information gathered through independent research, in particular when statistics are used as a basis for the applicability of minority rights.

¹⁹ Act on the Rights of Nationalities of Hungary, [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2012\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2012)014-e).

²⁰ *Idem*, pg. 8

²¹ See State Report pg. 12: “With regard to Gypsies/Roma in Hungary, [...], 315,583 persons in total declared themselves Gypsies or Roma [...]. This represents 3.2 percent of the population - the number is closer to the ratio of the estimated 7 per cent, which is generally accepted in literature”.

Article 4 of the Framework Convention

Institutional and legal developments in the area of discrimination

Present situation

36. 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”.²²

37. 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 Hungary²³ 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.

38. 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.²⁴ 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).²⁵ The Advisory Committee notes that the Authority receives every year a number of complaints²⁶ 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.²⁷ This is most regrettable, given that an overwhelming majority of observers

²² See Article IX (5) of the Fundamental Law available at www.mfa.gov.hu/NR/rdonlyres/8204FB28-BF22-481A-9426-D2761D10EC7C/0/FUNDAMENTALLAWOFHUNGARYmostrecentversion01102013.pdf.

²³ See § 16 of the ECRI Report on Hungary (fifth monitoring cycle) adopted on 19 March 2015 doc. ref.: CRI(2015)19, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf.

²⁴ The budget of the Authority constitutes a separate line within the budget of the parliament.

²⁵ The exchange rate for the Hungarian Forint (HUF) was on 1 January 2016 : 1€ = 315 HUF

²⁶ In 2011, the Authority received 118 complaints from (or on behalf of) Roma and 6 alleging discrimination of the ground of association with another ethnic group; in 2011 – respectively 118 and 6, in 2012 – 81 and 8, in 2013 – respectively 58 and 3, in 2014 – 70 and 6 and in 2015 – 52 and 3.

²⁷ Violations in cases filed by the Roma have been found in 6 cases in 2011, 4 cases in 2012, 3 cases in 2013, 2 cases in 2014 and 4 cases in 2015. See State Report, pg. 76-77.

agree and circumstantial evidence demonstrates that discrimination against Roma is a real and persistent phenomenon.

39. 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.

40. 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.²⁸ 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.

41. 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.”²⁹ 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).

42. 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 1993.³⁰ As a result of this reform, the ombudsman system of Hungary was reorganised: the Commissioner is responsible for the protection and promotion

²⁸ The Public Education Act has been amended to include a provision empowering the government to issue a decree “defining special requirements aiming to meet the requirements set forth in Article 28(2) Equal Treatment Act concerning the organisation of education based on religion, belief or nationality taking into account the prohibition of unlawful segregation”.

²⁹ See “Separate and unequal in Hungary: “catching up” and falling behind on Roma inclusion” available at www.roma.idebate.org/news-articles/separate-and-unequal-hungary-catching-and-falling-behind-roma-inclusion.

³⁰ See State Report pg. 23.

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.

43. The Commissioner, elected by the parliament by a qualified majority for a renewable term of six years,³¹ 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,³² the institution contributes to the promotion of human rights by the means of education, training and awareness-raising activities as well as advocacy.

44. 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.

45. 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 bureaucratised and would appear to unnecessarily limit the

³¹ The Commissioner may be re-elected only once.

³² According to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the Office of the Commissioner for Fundamental Rights has been granted "A" status as of 2015.

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.

46. 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.

47. 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

48. 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.

49. 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.

50. 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

51. 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 (NRSG) 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.

52. 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".³³ 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 Inclusion³⁴ (see also under Article 15).

53. 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."³⁵ [...] The employment rate of the Roma population barely reaches 20%. The 10% employment rate amongst Roma women is particularly alarming."³⁶ 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.

54. 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

³³ The National Social Inclusion Strategy "Extreme Poverty, Child Poverty and the Roma", (2011-2020), pg. 6, www.romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF.

³⁴ Principle No. 2 of the 10 Common Basic Principles on Roma Inclusion. Explicit but not exclusive targeting, instead of singling out the Roma as a distinct group, aims at improving the living standards and environment of all those living in similar conditions.

³⁵ The Strategy asserts that "Minimum 284,269 and maximum 315,085 people live in segregated housing conditions, some 3 percent of the country's population." pg. 51.

³⁶ See Strategy, pg. 25.

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 2012.³⁷ 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).³⁸

55. 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.³⁹ 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.

56. 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.

³⁷ See State Report, pg. 57.

³⁸ See Joint Submission to the UN Universal Periodic Review of the Chance for Children Foundation (CFCF), European Roma Rights Centre (ERRC) and Legal Defence Bureau for National and Ethnic Minorities (NEKI), September 2015, pg. 4, www.errc.org/cms/upload/file/hungary-submission-un-upr-september-2015.pdf.

³⁹ Idem, pg. 8.

57. 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.⁴⁰

58. 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

59. 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.

⁴⁰ See for example “Hungary’s National Roma Self Government being investigated for fraud” www.budapestbeacon.com/public-policy/hungarys-national-roma-self-government-being-investigated-for-fraud/26088.

60. 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

61. 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.

62. 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

63. 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.

Article 5 of the Framework Convention

Conditions enabling minorities to maintain and develop their culture

Present situation

64. The Advisory Committee notes the continued efforts of the authorities to maintain and revive the cultural expressions of national minorities. The doubling in the last two years of the funding for cultural projects of national minorities, reported by national minority "nationality advocates", is much appreciated. In particular, the Advisory Committee notes that the budget for 2016 earmarks 330 million HUF for cultural activities of national minorities, 270 million HUF for linguistic children's camps, and 330 million HUF for support to national minorities' NGOs.

65. The main state organs responsible for supporting minority cultures are the State Secretariat for Culture, which is responsible for public collections and theatres, and the State Secretariat for Religious, Nationality and Civil Social Relations, responsible for supporting cultural events of national minorities, both of which are located within the Ministry of Human Capacities. Further tasks related to support for national minorities' cultural events are

performed by the Fund Manager for Human Resources. In addition, the State Secretariat for Regional Administration of the Ministry of Public Administration and Justice supervises the work of the nationality self-governments, which are key players in implementing cultural activities locally. Bearing in mind this complicated, fragmented and multilayered structure, the authorities have undertaken to draft a Nationality Policy Strategy 2014-2020, one of the aims of which is to clarify the respective fields of responsibility and to eliminate possible overlapping. The Advisory Committee regrets to note that this Strategy had not been finalised at the time of the adoption of its Opinion in February 2016.

66. In addition to state structures supporting cultural projects of national minorities, a number of other institutions have been established with that aim. The National Institute for Community Culture is responsible for nurturing relationships between the national cultural organisations and institutions of national minorities and similar institutions of the majority. Under the aegis of the Institute, the Nationality Cultural Expert Council co-ordinates co-operation between the National Institute for Community Culture and national minority cultural organisations, and serves as an intermediary in finding solutions to demands and interests related to their cultural activities.

67. National minority self-governments play a major role in implementing minority-related cultural projects. The Advisory Committee notes in this respect that task-based budgetary support for the self-governments in 2014 amounted to over 1 billion HUF corresponding to two-thirds of the total 1.52 billion HUF allocated in the state budget to the functioning of these bodies. Furthermore, those national minority self-governments which took over the operation of public educational institutions (the Research Institute of Slovaks in Hungary, the Research Institute of Greeks in Hungary, the Scientific Institution of Croats in Hungary, the Serb Institute, the Research Institute of Romanians in Hungary, the ELTE Research and the Teacher Training Centre of Germans in Hungary) receive additional funding equivalent to the support which was provided to these institutions prior to the takeover. In this context, the Advisory Committee is pleased to note that support for institutions operated by national minority self-governments rose from 444.5 million HUF in 2010 to 586 million HUF in 2013.

68. An outstanding feature of the national minorities' cultural landscape in Hungary is the existence of theatrical groups. In fact, each national minority has set up its theatre and drama group performing in their minority language and for most part having at their disposal a building for that purpose. All such ethnic theatres and official drama groups have been financially supported with funding earmarked in the state budget. Multi-ethnic theatre festivals have been likewise regularly organised. In 2013, the Ministry of Human Capacities provided over 100 million HUF to support nine drama groups: the Croat Theatre in Pécs, the Hungarian Serb Theatre, the Cervinus Teátrum, the Cinka Panna Gypsy Theatre, the Alternative Arts Foundation, the Vertigo Slovak Theatre, the Karaván Arts Foundation, the Hókirálynő Association, and the Romano Teatro Cultural Association.⁴¹ Every year, the Ministry also funds "cultural days" or "cultural months" of specific minorities, for example the Month of Serbian Culture or Ukrainian Cultural Days.

69. To promote the visibility of national minority cultures, a *Pro Cultura Minoritatum Hungariae Award* has been established and is awarded on a yearly basis for an outstanding

⁴¹ See State Report, pg. 89.

activity promoting minority language-based cultural heritage and thus contributing to the coexistence based on tolerance and mutual respect of peoples in the Carpathian basin. Furthermore, the Nationality Gala Eve has also been regularly organised and well attended.

70. The Advisory Committee notes that the Nationality Act of 2011 allows for the transfer of ownership of any national minority cultural institution to the national minority self-government (provided that at least 75% of its activities are national minority related). A number of such institutions has in fact been taken over and is managed by national minority self-governments. By way of example one can name the National Roma Museum Collection and Gallery, the Library, the Archives and Document Library, the Cultural and Media Centre, the Polish Cultural Centre, the Slovenian Village House, and the Kùhár Memorial House. In this context, the Advisory Committee regrets to note that funding necessary for maintaining such institutions is at times not transferred in a timely way, causing significant difficulties for the establishments concerned. For example, according to minority representatives, funding for national minority theatres for 2015 was transferred only in September 2015, effectively paralysing them as they were unable to cover even basic expenditure and salaries. Furthermore, the current system of funding based on yearly grants, as opposed to a running subsidy, is considered by many representatives of national minorities to be bureaucratic and unnecessarily time- and labour-consuming.

Recommendations

71. The Advisory Committee calls on the authorities to pursue and strengthen their efforts to provide in a timely manner, adequate and sustainable financial support for minority cultural initiatives, theatres and museums.

72. The transfer of ownership of national minority cultural institutions should be accompanied by adequate safeguards which would guarantee financial stability allowing them to function without any interruption or hindrance.

73. When developing the Nationality Policy Strategy 2014-2020, ensure that responsibilities of administrative entities are clearly defined with the view to eliminating any possible overlap.

Article 6 of the Framework Convention

Interethnic and intercultural relations

Present situation

74. The Advisory Committees welcomes the efforts made by the authorities, including the Equal Treatment Authority and the Commissioner for Fundamental Rights, to promote tolerance and interethnic understanding in society. Most national minority representatives report an overall respectful attitude prevailing between the majority and most traditional well established minority groups and praise the positive climate. Efforts of the authorities to promote minority cultures, education and particular steps taken to strengthen representation of national minorities in parliament (with the possibilities offered by elections of "nationality advocates") and through the national minority self-governments are widely recognised and appreciated. Nationalities' Days have been celebrated in every county in Hungary since 2012.

75. Notwithstanding these efforts, there is a widely acknowledged perception of an increase in xenophobia and intolerance within Hungarian society directed in particular against the Roma and the Jewish community. Also, the uncompromising stance taken by the authorities during the current migration waves has fuelled xenophobic and intolerant attitudes against refugees, asylum seekers and migrants.

76. The Advisory Committee notes that, according to yearly research conducted by the Hungarian polling institute *Tárki*, openly admitted xenophobia reached a record high in April 2015, with 46% of the adult population stating that no asylum seekers should be allowed to enter the country. According to the same research, 45% of adult Hungarians considered that asylum seekers should be admitted or rejected depending on the merits of their case, while only 9% of the respondents said that all asylum seekers should be admitted unconditionally.⁴² Another study, conducted in the middle of the migrant crisis in the summer of 2015, found that 56% of respondents were of the view that immigrants posed a real threat to Hungary, while the opposite view was held by 16%.⁴³ The proportion of the population holding anti-Semitic views is high.⁴⁴ A survey conducted at the end of 2014 by the Hungarian polling institute *Medián*, at the request of the Action and Protection Foundation, found that around one-third of the population was characterised as anti-Semitic. At the same time, according to the poll, seven out of ten Hungarians did not hold anti-Semitic views.

77. The rhetoric used by *Jobbik*'s politicians and local councillors has been consistently anti-Roma and anti-Semitic.⁴⁵ In March 2015, the deputy chairman of *Jobbik*'s Debrecen Hajdú-Bihar County organisation was fined 750,000 HUF by the District Court of Debrecen for publicly denying, in a speech delivered at the commemoration events of the Hungarian soldiers who died in the Soviet Union, the existence of the crimes of the national socialist regimes and denying the Holocaust. The same month, it was revealed that *Jobbik*'s candidate in the Tapolca by-election had praised on his Facebook page an article describing Roma as a "biological weapon of the Jews".⁴⁶

⁴² Magyarország jobban teljesít: csúcson az idegenellenesek aránya – derül ki a TÁRKI 1992 óta végzett kutatásának legújabb adataiból. [Hungary performs better: ratio of xenophobes on record high – according to the latest results of the research conducted by TÁRKI since 1992], 5 May 2015. www.tarki.hu/hu/news/2015/kitekint/20150505_idegen.html.

⁴³ Ipsos and Republicon Institute study (June and July 2015): *A pártok helyzete 2015. Republikon Intézet*. 27 August, 2015. www.republikon.hu/media/20993/partok2015_v4.pdf.

⁴⁴ According to a survey conducted by the Hungarian polling institute *Medián* at the request of the Action and Protection Foundation at the end of 2014 around 30% of the population is characterised by anti-Semitism. At the same time, according to the poll, seven out of ten Hungarians are not anti-Semites. (see: Hann, Endre and Róna, Dániel (2015): *Anti-Semitic Prejudice in Contemporary Hungarian Society Research Report*. Budapest: *Medián*, Action and Protection Foundation. http://kantorcenter.tau.ac.il/sites/default/files/Median_TEV_2014_eng_0.pdf

⁴⁵ For example, reflecting of the first child born in Hungary in 2015, *Jobbik*'s deputy leader made a harsh anti-Roma statement, commenting that the name of the child struck him as suspiciously Gypsy-sounding and stressed that the child's mother was 23 years-old and already had three children. He went on to say that the number of Hungarians was declining catastrophically and that Hungarians will soon become a minority in their own country. See *Néhány gondolat a Rikárdó-hisztéria kapcsán*. [A few thoughts related to hysteria about Rikardo]. 12 January 2015. www.jobbik.hu/hireink/nehany-gondolat-rikardo-hisztéria-kapcsan (available in Hungarian only)

⁴⁶ *Vona Gábor tapolcai jelöltje: a cigányság a zsidók biológiai fegyvere*. (The candidate of Gábor Vona in Tapolca: Roma are the biological weapon of the Jews). www.kettosmerce.blog.hu/2015/02/14/vona_gabornak_igaza_van_beszeljunk_rig_lajosrol, 14 February 2015.

Recommendation

78. The Advisory Committee urges authorities to take a firm stance against and condemn any racist, xenophobic and anti-Semitic language in the political discourse and in the media and to double their efforts to prevent and combat intolerance in society.

Anti-Gypsyism

Present situation

79. The policies advocated by *Jobbik* are openly directed against Roma, who are blamed for “Gypsy crime”, social welfare abuse, laziness, dirtiness, and unwillingness to learn and to integrate. At the local level, *Jobbik* mayors and *Jobbik*-dominated town councils introduced municipal security services (like the “Field Guard” in Ásotthalom), tightened the rules for social housing attribution, by demanding an impeccable extract from a judicial record, campaigning against any social inclusion measures and strict surveillance of anybody offered public work.

80. Intimidating marches and demonstrations organised by the extreme right-wing paramilitary organisations, such as the Association for a Better Future Civil Guard (NPFHCGA),⁴⁷ have continued in the last five years. In 2011, para-military groups, unimpeded by local police, harassed and intimidated Roma communities of Gyöngyöspata and Hajdúhadhaz, and in the following year similar demonstrations took place in Devecser, Cegléd and Miskolc.⁴⁸

81. As regards anti-Roma violence, the Advisory Committee notes that harassment and various forms of violence are an everyday occurrence for many of them. For example, on 4 March 2011, an eight-month pregnant Roma woman was assaulted by masked men dressed in black uniforms carrying whips and spitting on her. Subsequently, the woman delivered her baby one month ahead of term, according to some sources, possibly as a result of the psychological stress and fear brought on by the attack.⁴⁹ Although an official complaint was filed, the police stated that they “did not find racial motivation in the attack”. A similar attack against a pregnant woman occurred on 7 September 2012 in Sárrétudvari, Hajdú-Bihar county.⁵⁰ On 27 July 2012, a house of a Roma family in Nemesvid, Somogy county, was burnt down.⁵¹

82. In this context, the Advisory Committee notes that Hungary has been recently found to be in breach of the ECHR by the European Court of Human Rights for failing to investigate a

⁴⁷ NPFHCGA was established in 2010, following the court ban on the Hungarian Guard and the Hungarian Guard Movement (in December 2008).

⁴⁸ Testimony on the situation of Roma in Hungary by the European Roma Rights Centre (ERRC) for consideration by the Commission on Security and Cooperation in Europe, U.S. Helsinki Commission, www.hungarianspectrum.org/2013/03/23/testimony-on-the-situation-of-roma-in-hungary-by-the-european-roma-rights-centre/.

⁴⁹ See European Roma Rights Centre (ERRC), Attacks against Roma in Hungary: January 2008-September 2012, pg. 9, www.errc.org/cms/upload/file/attacks-list-in-hungary.pdf.

⁵⁰ *Thaibokszoló mentőtiszt támadt egy terhes roma lányra?* www.index.hu/belfold/2012/09/07/sarretudvari_konfliktus/ (in Hungarian):

⁵¹ *Három hónapja félelemben egy nemesvidi roma család* www.romnet.hu/hirek/2012/07/27/harom_honapja_felelemben_egy_nemesvidi_roma_csalad (in Hungarian).

racist attack in Szeged in 2011 against a Roma man.⁵² The victim who was first attacked with his girlfriend in a night club by a group of three persons was subsequently verbally abused (by being called a “dirty Gypsy”) by a man identifying himself as a policeman.

83. The Advisory Committee is deeply concerned about information according to which the authorities, in 2013, awarded the prestigious *Táncsics Mihály* award to a journalist infamous for spreading Jewish conspiracy theories and describing Roma as “human monkeys” and honoured him as the “journalist of the year in Hungary”.⁵³

Recommendations

84. The Advisory Committee strongly urges the authorities to condemn systematically and promptly all instances of anti-Roma rhetoric in public discourse, particularly in the political arena and in the media.

85. The Advisory Committee calls on the authorities to ensure that more vigorous, speedy and effective action be taken to prevent, investigate and prosecute offences committed with racial or xenophobic motives, and to provide for constant monitoring of this phenomenon within society. The Advisory Committee further asks the authorities to investigate promptly and in a transparent manner all cases of alleged police abuse and misconduct, so as to ensure that the public, including the Roma, have confidence in the impartiality and effectiveness of the complaints’ mechanism in cases regarding police abuse.

86. The Advisory Committee further calls on the authorities to intensify their efforts to promote respect and intercultural understanding among the different groups in society overall, including through comprehensive measures that target the majority population.

87. The authorities should do everything in their power to ensure that persons perpetrating hate speech and hate crimes against Roma are identified, investigated and charged accordingly with a proportional sentence.

Anti-Semitism

88. The Advisory Committee notes with regret that the interethnic climate has been strained, in particular between the Jewish community and the authorities, by a tendency to re-assess modern Hungarian history and to relativise the involvement of the Hungarian authorities in the crimes committed during World War II. The Jewish community has been particularly appalled by the trivialisation of events such as the rounding-up, upon orders from the Hungarian Authority for the Inspection of Foreigners, and the deportation of Jews to Eastern Galicia (Ukraine) where they were subsequently murdered in August 1941. This tragic event, in which between 13,000 and 18,000 Jews were handed over to the German occupation

⁵² See Judgment of 20 October 2015 in the case of BALÁZS v. HUNGARY, (Application no. 15529/12) (referral to the Grand Chamber pending at the moment of adoption of the present Opinion), www.ertf.org/index.php/8-news/258-pz.

⁵³ www.hungarianglobe.mandiner.hu/cikk/20130322_szaniszo_s_tancsics_prize_crazy_awarding_of_crazy_performances.

authorities in Ukraine, was described by the Director of the newly established Veritas Institute⁵⁴ as “police action against aliens”.

89. The erection in 2015 of a World War II memorial dedicated to all the victims of Hungary’s German occupation in Budapest, which depicts Hungary as the Archangel Gabriel being attacked by a German imperial eagle, thus – according to its critics - symbolically absolving the Hungarian State and Hungarians of their role in sending some 450,000 Jews to their deaths during the occupation caused protests not only of Hungarian Jewish leaders, but also many political leaders, civil society representatives and ordinary Hungarians.

90. Another contentious issue, poisoning interethnic relations was the Budapest court rehabilitation in March 2015 and the plans for erection in Székesfehérvár of a statue of Bálint Homan,⁵⁵ a minister in the government of Miklós Horthy responsible for anti-Semitic legislation of the 1930s and a proponent of deportation of Hungarian Jews in 1944. The Advisory Committee notes with concern that, although the plans for the erection of the statue in Székesfehérvár were abandoned in December 2015, other municipalities have come forward as possible candidates for its location.

91. Controversy continued to surround the new state-sponsored Budapest “House of Fates” Holocaust memorial museum and education centre focusing on child victims⁵⁶ which, given the ongoing tensions, the Jewish community leaders refused to endorse. Regrettably, in the context of reassessing modern Hungarian history, all these issues, indicative of serious differences of perceptions of Hungary’s historical experience, led to the boycott by Jewish organisations of governmental commemorations of the 70th anniversary of the 1944 Holocaust of Hungarian Jews in 2014.

92. The number of anti-Semitic incidents varied in the last years from 95 in 2013 to 73 in 2014, with another 26 in the first half of 2015. There is a perceptible drop in the number of such incidents, which has been acknowledged by the Federation of Jewish Communities in Hungary (MAZSIHISZ).⁵⁷ The vast majority of such incidents (over 70%) fall into categories of “vandalism” (knocking down tombstones, graffiti, smashing of commemorative plaques), “hate speech” (insults, social media postings) and “political anti-Semitism” (see paragraphs above). No physical attacks were recorded in the first half of 2015, and the number of such incidents (kicking, snatching a camera and damaging it, pouring beer over someone) in 2014 was low (under 10% of the total). More than half of such incidents were recorded in Budapest. Such acts are consistently condemned in the strongest terms by the authorities and criminal

⁵⁴ The VERITAS Research Institute for History was founded on 2 January 2014 by Government Regulation 373/2013 (X.25.). Its mission statement reads: “The government of Hungary created the VERITAS Research Institute [...] with the explicit goal of studying and re-evaluating the historical research of Hungary’s past one hundred fifty years, especially of those historical events generating much debate but never having reached a consensus understanding.”

⁵⁵ See: US joins Hungary protest over pro-Nazi Homan statue www.bbc.com/news/world-europe-35091071.

⁵⁶ Budapest politicians tour new Holocaust museum, described as “shocking”, www.hungarianfreepress.com/2015/05/07/budapest-politicians-tour-new-holocaust-museum-described-as-shocking/.

⁵⁷ See: “Antisemitic incidents 2014”, and “Antisemitic incidents 2015 half-year” (documents in PDF format, not available online).

investigations are initiated,⁵⁸ although, regrettably, in most of the cases involving vandalism the perpetrators are rarely found and prosecuted.

93. On the positive side, the Advisory Committee notes that the history curriculum was comprehensively reviewed in 2014 and 2015, identifying no less than 52 references to Jewish presence, interaction and contribution to Hungary's history. Furthermore, teaching about the Holocaust has become a compulsory element of education. Public denial, downplaying or justification of the Holocaust or of the crimes committed by Hungary's communist regime is punishable by up to three years in prison, and there have been cases of successful prosecutions resulting in fines.⁵⁹ In 2015, a Hungarian man was fined 800,000 HUF for denying the Holocaust.⁶⁰

Recommendations

94. The Advisory Committee urges the authorities to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts. The authorities must intensify awareness-raising measures and training programmes for law enforcement officials and the judiciary on tolerance and anti-discrimination issues.

95. The authorities are encouraged to continue improving dialogue with the Jewish community and to combat anti-Semitism in public spaces. Particular attention should be paid to identifying and prosecuting acts of vandalism and hate speech.

96. The Advisory Committee invites the authorities to engage in a wide consultation process with civil society and national minority organisations prior to making decisions about commemorations of historical events with a view to ensuring that multiple perspectives are duly taken into account.

Combatting hate speech and hate crime

97. The Advisory Committee notes that a new Criminal Code entered into force on 1 July 2013, replacing the old Criminal Code dating back to 1978. This new Act criminalises violence towards a member of a community (defined as anyone belonging to a national, ethnic, racial or religious group), or based on disability, gender identity or sexual orientation (Sections 216 (1)-(2)), and incitement to hatred against a community including a national, ethnic, racial or religious group (Section 332). The Advisory Committee shares the ECRI's assessment that omission of the ground of language should be rectified to make Articles 216 and 332 fully compatible with ECRI's General Policy Recommendation N° 7.⁶¹

⁵⁸ Jewish graves vandalised, human remains scattered in Hungary, Jewish Times, 23 March 2015 www.timesofisrael.com/jewish-graves-vandalized-human-remains-scattered-in-hungary/, Hungary - 57 Jewish Tombs Vandalised In Hungary, www.vosizneias.com/110438/2012/07/23/hungary-57-jewish-tombs-vandalised-in-hungary/.

⁵⁹ In 2015, an individual was fined 800,000 HUF for denying the Holocaust in a comment on the Facebook page of a Jewish advocacy group. In January 2016, in another case, a man was sentenced to three years' probation for publicly denying the Holocaust. <http://www.theglobeandmail.com/news/world/hungarian-man-gets-three-years-probation-for-holocaust-denial/article28312094/>.

⁶⁰ See source quoted in footnote 59 above.

⁶¹ See ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination adopted on 13 December 2002 § 18 (doc. ref.: CRI(2003)8)

98. The range of hate crimes recognised by the Criminal Code include homicide (Section 160 (1) c) and battery (Section 164) “committed with malice aforethought or with malicious motive”.⁶² When imposing a punishment, the courts should, according to the “sentencing principles” listed in Article 80 of the Criminal Code, take into account aggravating and mitigating circumstances. The Advisory Committee regrets to note that these aggravating circumstances are not enumerated and consequently there is no specific mention of racist motivation constituting an aggravating circumstance. It takes note, however, that according to the authorities, racist motivation would always qualify as a malicious motive. The Advisory Committee considers that the catalogue of crimes committed with “malice aforethought or malicious motive” (understood to include racist motivation) is too narrowly defined and should in principle cover all crimes.

99. The Advisory Committee regrets to note that crime statistics published by the prosecutor’s office and the police do not provide specifics on bias motivation. For this reason, it is not possible for the Advisory Committee to have an impression on racially motivated criminality. According to fragmentary information provided to the OSCE’s Office for Democratic Institutions and Human Rights⁶³ the police recorded in 2013 (the last year for which figures are available) 43 hate crimes, of which 30 were prosecuted leading to 14 convictions. Civil society organisations estimate, according to the same source, the number of hate crimes to have been 72 (10 violent attacks, 4 threats and 58 attacks against property).

100. In 2012, the National Police established the Hungarian Hate Crime Special Network to tackle hate crimes in Hungary. In each of the 19 counties, a police officer was appointed to co-ordinate investigations whenever a hate motive for a crime was suspected. It has to be noted that the appointed officers had to assume co-ordination of hate crime investigations in addition to their primary duties, as an additional task without any extra resources being provided. The Advisory Committee also notes that no liaison officers tasked with ensuring contacts between the police and vulnerable groups have been appointed.⁶⁴

101. The National Media and Infocommunications Authority as well as the Media Council of this institution were established under the Act LXXXII of 2010 on the Amendment of Certain Acts on Media and Telecommunications. The Media Council acts on complaints against electronic media and is empowered to impose sanctions up to 200 million HUF.⁶⁵ The Advisory Committee notes that the Media Council, whose members are independent and elected by a two-thirds majority of members of the National Assembly for a non-renewable nine-year term, receives a small number of complaints, ranging between one and five per year. It notes in this context that in 2015, the Media Council sanctioned three cases of hate speech on private television channels.

www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf.

⁶² In addition to the two crimes listed above, “malice aforethought or malicious motive” are taken into consideration when sentencing for violation of personal freedom (Section 194), defamation (Section 226), and unlawful detention (Section 304).

⁶³ See OSCE ODIHR Hate Crime Reporting website www.hatecrime.osce.org/hungary?year=2014.

⁶⁴ See Working Group against Hate Crimes (GYEM): submission to the UN Universal Periodic Review of Hungary, September 2015.

⁶⁵ See www.freedomhouse.org/report/freedom-press/2015/hungary.

102. Furthermore, the Advisory Committee welcomes information on the Media Authority setting up an Internet Hate-speech Hotline. This mechanism has been used by the Authority on a number of occasions, in particular against sites hosting anti-Roma, anti-Semitic or white supremacist content, to ask a court to issue a temporary court injunction with immediate effect to take an offending site offline and to decide, following a due process of law, on permanent elimination of the site. Should the content be hosted on a server located outside Hungary, the court may decide to block access from Hungary to the offending content. It has to be noted however that the time required for a court decision, which is the only legal possibility of removing offending content, makes this measure ineffective, given the immediacy of access to the Internet.

Recommendation

103. The Advisory Committee calls on the authorities to continue to keep under review the effectiveness of existing criminal law provisions against racism, and consider amending the law so as to ensure full protection against racist crime. Racist motivation should be explicitly stated in the Criminal Code and should apply to all criminal offences.

Police

104. The Advisory Committee recalls that in its previous Opinion it observed with regret that racially motivated abuse by members of the police force continued to be reported. In particular, representatives of Roma and civil society were reportedly falling victim of racist attitudes and police brutality.⁶⁶ Regrettably such occurrences continue to plague the law enforcement agencies. In this connection the Advisory Committee notes the recent rulings of the European Court of Human Rights in the cases of *Balazs v. Hungary* and *Kiss v. Hungary* in which Hungary was found to violate the ECHR by failing to investigate racist attacks against Roma applicants. In another case dating back to 2012, a 72-year-old Roma was beaten at the Gyomro police station at the time of his detention. The Advisory Committee is pleased to note that the Commissioner for Fundamental Rights together with the Deputy Commissioner for the Protection of the Rights of Nationalities investigated the case and recommended that the Prosecutor General institutes criminal proceedings against two police officers.⁶⁷

105. In this regard, the Advisory Committee further notes that an Independent Police Complaints Board (IPCB), established in 2008, is entitled to hear and investigate complaints about police misconduct involving breaches of police ethics and discipline. The Board, which is composed of five members appointed by the parliament, can make recommendations to the Head of the National Police General Directorate. Should the Board's recommendations not be accepted, the Board could refer the case to a court for a decision. The Advisory Committee notes that the Board may only act upon a complaint of an alleged victim, and does not have the power to initiate inquiries *ex officio*.⁶⁸ The Advisory Committee notes that the complaints' procedure seems to be well known and used, as hundreds of complaints are lodged with the

⁶⁶ See ACFC 3rd Cycle Opinion on Hungary, pg. 17

⁶⁷ See www.state.gov/documents/organization/236744.pdf, pg. 3.

⁶⁸ For details refer to the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013, § 28, doc. Ref. CPT/Inf 2014) 3.

Board each year.⁶⁹ According to the Advisory Committee's interlocutors, the Board's recommendations to the head of Police are followed in a minority of cases. The Advisory Committee regrets to note that such information is not available on the web page of the IPCB.

106. Finally, the Advisory Committee welcomes information it received during its visit to Hungary that a legislative amendment to increase the powers of the IPCB is being considered, although no draft has been tabled as yet.

Recommendations

107. The authorities should extend the powers of the Independent Police Complaints Board with a view to enabling it to initiate *ex officio* inquiries into cases of alleged police misconduct.

108. The authorities should provide the IPCB all necessary support so as to enable it to carry out its tasks independently, and effectively, in particular by bringing all cases of alleged mistreatment by the police to court.

Article 9 of the Framework Convention

Access of persons belonging to national minorities to the media

Present situation

109. The Advisory Committee notes that public television and public radio broadcasts in the languages of national minorities have been a part of regular programming for decades in Hungary. Since 1 January 2011, the most important elements of the legal regulation applicable to broadcasting for national minorities and in languages of national minorities by the public service media are regulated by the Act CLXXXV of 2010 on Media Services and Mass Communication (hereinafter: the Media Act). Its provisions oblige public service broadcasters to contribute to the fostering of cultures and languages of national minorities and to provide information in these languages on a regular basis.

110. The public radio and television continue to broadcast a wide array of programmes for or about national minorities. In particular, the Hungarian public radio MR4, specifically dedicated to national minorities, broadcasts for 12 hours a day programmes in the languages of all thirteen national minorities, including news on cultural events, traditional and religious holidays of all national minorities and news of their national minority self-governments. These programmes include two-hour daily programmes in the Croat, German, Romanian, Serb and Slovak languages, and 30-minute weekly programmes in the Armenian, Bulgarian, Greek, Polish, Ruthenian, Slovenian and Ukrainian languages. The Roma programmes are broadcast one hour five days a week alternating in two Roma languages (Romani and Beash). As regards the latter programme, one of its declared aims is to stop language loss and to support the Roma culture, thus contributing to the preservation of linguistic identity of Romani and Beash

⁶⁹ According to the US State department's Human Rights report for 2014 (see link in footnote 57) "As of the end of September (2014), the board received 289 reports from the public. It reviewed 72 complaints (including some cases filed in 2013) and found serious legal violations in three and minor legal violations in six. The board forwarded eight cases to the national police chief, who partially accepted the findings in one case and rejected the findings in two."

speakers. In addition, a 26-minute Roma magazine *Jelenlét* is broadcast every Saturday and Sunday on *Kossuth Radio*.

111. The public radio broadcasts a number of programmes in the Hungarian language dedicated to the issues of concern to national minorities with the aim of familiarising the majority with them. Every week, on Sundays, a 55-minute Hungarian-language generalist magazine *Egy hazában* (On one's homeland) is broadcast. The programme *Gyöngyszemek* (Pearls) which can be listened to on Sundays as well, presents a selection from the literature in the languages of national minorities in five minutes every week. The programme *Nemzetiségek ünnepei* (Holidays of nationalities) is broadcast on the dates of important anniversaries, and the programme *Nemzetiségeink zenéje* (Music from our nationalities) presents the musical culture of a different nationality every day. Finally, a national anthem of one of the kin-states of one of the national minorities is played at midday every day.

112. In addition to the broadcasts in languages of national minorities transmitted by the public radio, a number of national minority self-governments run their own terrestrial or Internet radio stations. These include *Radio Monošter* operated by the Slovenian national minority self-government, *Croatia Radio*, operated by the Croat national minority self-government and *Radio Srb* operated by the Serb national minority self-government. Community TV programmes in the German language are produced and broadcast via the cable network by the Vértessomló Association for Community Education Broadcasting, an NGO operating in the Komárom-Esztergom county.

113. The Hungarian public television channel M1 broadcasts 25-26 minute magazine programmes presenting diverse cultures, history, current news and events relating to national minorities in the languages of national minorities with Hungarian subtitles (or vice versa) in the early afternoons from Monday to Thursday. According to the State Report, these programmes include: a Roma magazine programme and *Domovina* (in Slovak) – on Mondays, *Sprski Ekran* (in Serbian) and *Unser Bildschirm* (in German) – on Tuesdays, *Hrvatska kronika* (in Croatian) and *Ecranul Nostru* (in Romanian) – on Wednesdays, and alternating fortnightly *Rondó* (in Armenian, Bulgarian, Greek, Polish, Ruthenian and Ukrainian languages), *Slovenski utriniki* (in Slovenian) – on Thursdays. In addition M1 Station broadcasts a *Kvartett Magazine* – programme produced jointly by public service televisions of the Visegrad Group), *Rondó* and *Alpok-Adria* (joint magazine programme of the Bavarian, Croatian, Hungarian, Italian and Slovenian televisions). On Fridays, alternating fortnightly, Roma magazines *P'amende* and *Életkerék* are broadcast. The Advisory Committee notes that the programme producers, including the editorial staff belonging to the national minorities, are integrated within the structures and are employed by the public television.

114. In addition, programmes in the Hungarian language, such as *Pillér Magazine*, relaying the concerns of national minorities (such as education, language, census, and holidays) are broadcast on Sunday afternoons. Also, a weekly 50-minute music programme *Összhang* (Harmony) is produced with the aim of presenting the musical culture of the Carpathian basin.

115. The Advisory Committee notes with concern that, according to a number of minority representatives the digital switchover of the television broadcasting had some detrimental effect on the ability of persons belonging to national minorities to access the programming in their languages. In addition, the discontinuation of certain programmes, such as the *Együtt*

(Together) magazine, has been very much regretted according to representatives of national minorities. The Advisory Committee further notes that the timing of broadcasts of the programmes shown on working days in the early afternoon may not be convenient to the working age population. It welcomes however the fact that all of the programmes on and for national minorities are available online.

116. The authorities continue to support the written press and other publications in languages of national minorities. Two weekly papers are produced in Bulgarian, Polish and Romanian as well as five weekly publications in Roma languages. In addition, the authorities provide financial support to an interethnic periodical *Barátság* (Friendship).

117. The Advisory Committee notes with regret that ethnicisation of society and perceived tensions concerning the authorities' approach to commemoration of historical events as well as acrimonious debates on current domestic and international issues, had a negative effect of diminishing the presence of and interest in existing diversity within Hungarian society, resulting occasionally in self-censorship, including in the media in the languages of national minorities.

Recommendations

118. The Advisory Committee invites the authorities to ensure that the public radio and television channels continue to produce and broadcast minority language programmes in line with relevant legislation, taking into account the timing of broadcasts in order to promote effective access to the programmes.

119. The authorities are invited to continue to support minority language publications to meet the existing demand.

120. While fully respecting the freedom of the media, the authorities should encourage them to increase attention to the diversity of Hungarian society by avoiding folklorisation of minorities and mainstreaming minority interests within the general programming targeted at the majority.

Article 10 of the Framework Convention

Use of minority languages in relations with administrative authorities

Present situation

121. The Advisory Committee in its previous Opinions acknowledged that the legislative framework in Hungary was compatible with the Framework Convention and requested that the authorities continue their efforts to encourage the use of minority languages in relations with administrative authorities.

122. The new Fundamental Law of Hungary, in Article XXIX,⁷⁰ guarantees to all persons belonging to national minorities the right "to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues." Expanding on this general provision, the Act on the Rights of Nationalities of 2011 confirms the provisions that existed in the earlier legislation and provides for the right to use minority languages in civil and criminal proceedings as well as in

⁷⁰ See footnote 1

public administration proceedings (Article 5 § 2). The Act further stipulates that in municipalities where persons belonging to a national minority constitute, according to the last census, no less than 20% of the inhabitants, the minutes and decisions of the municipal council shall be kept, should the local nationality self-government so request, in the language of the national minority concerned, in addition to Hungarian (Article 5 § 5). In addition, nationality self-government members may use their minority languages during the meetings of municipal councils (Article 5 § 4). The Advisory Committee notes, however, that in practice these rights are rarely used due to fluency in the Hungarian language of persons belonging to national minorities.

123. The Advisory Committee further notes that in municipalities where persons belonging to a national minority constitute, according to the last census, no less than 10% of the inhabitants, the municipal decrees and announcements shall be promulgated and published, in addition to the Hungarian language, in the language of the national minority concerned and the forms used in public administration proceedings shall be available in that language (Article 6 § 1 (a) and (b)). The Advisory Committee notes that according to its interlocutors, in practice this opportunity is seldom (if ever) used, as it would impose an additional administrative burden on all concerned.

124. National minority languages may also be used in the National Assembly by Members of Parliament belonging to a national minority and the nationality advocates. The Advisory Committee welcomes the information shared by the nationality advocates that the Rules of Procedure of the National Assembly authorise them to address the plenary sittings and committees in their minority language, provided they request interpretation a day in advance. This possibility is warmly welcomed as it demonstrates the positive and inclusive attitude towards national minorities and their languages in the public domain. It has to be noted however, that this right is rarely, if ever, used on account of fluency of all concerned in the Hungarian language, and on account of the administrative and financial burden it would entail.

Recommendation

125. The Advisory Committee reiterates its call on the authorities to encourage persons belonging to national minorities to use minority languages when dealing with administrative authorities, by creating an environment, which is not obstructive to such a possibility in practice.

Article 11 of the Framework Convention

Use of the name and first names in minority languages

Present situation

126. The Advisory Committee notes that in its previous opinions it acknowledged that there were no particular difficulties as regards the possibility to register surnames and first names in languages of national minorities.

127. The Act on the Rights of Nationalities of 2011 confirms the provisions that existed in the earlier legislation and provides for the right of persons belonging to national minorities to use their surnames and first names in their minority language and to have such names recognised in official documents and registers (Article 16 § 1). The Act further stipulates that the names

should be recorded taking into account the grammatical rules of the minority language in question and, as regards languages using alphabets other than Latin, that a “phonetic transcription” must be applied.

Recommendation

128. The Advisory Committee reiterates its invitation to the authorities to continue their efforts to ensure the implementation of Article 11 of the Framework Convention as regards the proper use and registration of names and first names.

Topographical indications

Present situation

129. The Act on the Rights of Nationalities of 2011 stipulates that in municipalities where persons belonging to a national minority constitute, according to the last census, no less than ten percent of the inhabitants, signs displaying the name of a locality and street names shall be displayed in the language of the national minority concerned (Article 6 § 1(d)). Furthermore, the signs displaying the names of public offices and agencies providing public services or messages relating to the operation thereof shall also be displayed in the language of the national minority concerned, together with Hungarian (Article 6 § 1 (c)).

130. The Advisory Committee notes that there are only very few municipalities in Hungary where persons belonging to national minorities live in substantial numbers to meet the threshold of ten percent. Regrettably, the right to display topographical indications in minority languages is very rarely used in practice, and no data on the number of municipalities where such signs are displayed is available. Bilingual signs have been introduced in addition to the Hungarian language, in Gyula (in Romanian), in Békéscsaba (in Slovak) and in Sopron (in German). The Advisory Committee regrets to note that, according to available information, nowhere in Hungary have there been any signs introduced in either of the two languages used by the Roma (Romani and Beash).

Recommendation

131. The Advisory Committee asks the authorities to encourage those municipalities, where the right to display bilingual signs and indications of place names is not implemented in practice, to take measures in order to ensure that the provisions of Article 11, paragraph 3, of the Framework Convention are effectively implemented.

Article 12 of the Framework Convention

Situation of Roma children in the sphere of education

Present situation

132. The Advisory Committee recalls that segregation of Roma children at school, disproportionate placement of Roma children in special schools and other difficulties experienced by Roma children have been followed with considerable attention in the previous Opinions and the authorities were recommended to take specific measures to eliminate the identified shortcomings.

133. The authorities have adopted a number of programmes designed to tackle the identified problems, following the “explicit but not exclusive targeting principle” called for under the EU’s 10 Common Basic Principles on Roma Inclusion (see also §§ 51-54 above). The longest-term programme is the National Strategy “Making Things Better for our Children”, a multigenerational programme (2007-2032) adopted already in 2007. The programme was elaborated by the Programme Office to Combat Child Poverty, a team operating within the Hungarian Academy of Science (MTA GYEP) in the years 2005-2006. One of its espoused priorities has been the gradual but radical improvement in the situation, particularly as concerns access to quality education of Roma children.

134. In 2011, the authorities carried out a comprehensive overhaul of all hitherto existing programmes in the social field and combined them into one overarching programme “National Social Inclusion Strategy - Deep poverty, child poverty and Roma 2011-2020” (hereafter: NSIS).⁷¹ The Advisory Committee notes that the rationale for such a profound review has been justified by the significant overlap of the target groups of all the programmes. The authorities acknowledge that among the approximately 750,000 Roma, between 500,000 and 600,000 are very poor. Furthermore, it is estimated that of the 400,000 children living below the poverty line at least half are Roma. Finally, significant parts of the Roma live in the poorest regions of Hungary. The Strategy has been well received by the European Commission, which is overseeing the Framework for National Roma Integration Strategies up to 2020⁷² and was praised for being “comprehensive, multidimensional and integrated” with targets, which are “specific, numeric, in line with the Europe 2020 objectives”.⁷³

135. The Advisory Committee notes that in May 2011 the authorities and the National Roma self-government signed a framework agreement which, among others, established a common decision-making mechanism aimed, among others, at improving the education and employment of Roma children. In 2012, the authorities created the advisory Roma Co-ordination Council tasked with the development, implementation and evaluation of the social situation of Roma and the promotion of their social integration. Finally, the Evaluation Committee of the “Making Things Better for Our Children” National Strategy provides its own assessment of the implementation of that specific component of the NSIS.

136. Roma children largely benefit from various scholarship schemes developed under the Útravaló – MACIKA Scholarship Programme. A requirement has been introduced in 2011 that at least 50% of beneficiaries of all equal opportunity schemes (“Road to Secondary School”, “Road to the Secondary School-leaving Examination” and “Road to Vocation”) of the Útravaló – MACIKA Scholarship Programme be of (self-declared) Roma origin. This ratio was largely attained already in the 2012-2013 academic year. Of 16,636 students benefitting from the programme, 9,178 students (corresponding to 55% of the total number of students covered by the programme) declared that they were of Roma origin.⁷⁴

⁷¹ Other elements of NSIS include: the Hungarian Labour Plan, Semmelweis Plan (concerning health issues), Strategic Plan of the Decade of Roma – Roma Inclusion Programme, and the Public Education Strategy. See www.ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf, pg. 17.

⁷² An EU Framework for National Roma Integration Strategies up to 2020, Council Conclusions 10658/11.

⁷³ Investing in Children: Breaking the cycle of disadvantage: A Study of National Policies – Hungary, pg. 10, www.europa.eu/epic/docs/countries/hu-investing-in-children-2013_en.pdf.

⁷⁴ See State Report, page 65.

137. Under the "Road to Tertiary Education" programme, 57 Roma students (14% of the total of 387) received scholarships in the 2012-2013 academic year (the last year for which figures are available) to cover university tuition fees, with the exact amount of the scholarship being dependent on the grades obtained. Also, the "Second Chance" programme *Híd* (Bridge) has been set up to help young adults who have dropped out of the school system, to obtain secondary school qualifications.

138. Against this highly developed institutional background the Advisory Committee regrets to note that the espoused targets are not only not being achieved but, on the contrary, the indicators point to the worsening of the situation. School segregation of Roma children is very high in Hungary. Approximately 45% of all Roma children attend schools or classes where all or the majority of their classmates are also Roma.⁷⁵ The Educational Authority (EA) reported in 2014 that 381 primary and secondary schools had 50% or more Roma among their students (although the EA warned that there is high latency in the provided data).⁷⁶ Regrettably, these figures demonstrate that declarations by the authorities that "[t]he Hungarian government stands firmly against segregation and will continue to do everything for the integration of the Roma" are not being followed by concrete action.⁷⁷

139. The Advisory Committee is deeply concerned that in practice the authorities give clear preference to the notion of "catching up" by the Roma children (*Felzárkozás*)⁷⁸ to be achieved through education in Roma classes and schools. This notion follows from the Fourth Amendment to the Fundamental Law⁷⁹ and stigmatises Roma children as being solely responsible for the existing low attainment and high school dropout levels. Placement of Roma children in segregated classes and schools, where they are supposed to "catch-up", removes the issue of providing quality education to Roma children away from the view and care of the majority population. Perversely, it makes the victims of discrimination responsible for overcoming it (see related comment under Article 4). The Advisory Committee considers that all evidence points to the conclusion that "catch-up" classes and schools are in fact segregated classes and schools where nobody ever catches up.

⁷⁵ See www.fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf, European Union Agency for Fundamental Rights (FRA): Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States, 2014, pg. 44–45.

⁷⁶ See Joint Submission to the UN Universal Periodic Review of the Chance for Children Foundation (CFCF), European Roma Rights Centre (ERRC) and Legal Defence Bureau for National and Ethnic Minorities (NEKI), September 2015, pg. 4.

⁷⁷ See for example statement of the Minister of Human Capacities at a meeting of Anti-Segregation Roundtable, "Hungary stands firmly against segregation", www.kormany.hu/en/ministry-of-human-resources/news/hungary-stands-firmly-against-segregation, Budapest, 14 May 2015.

⁷⁸ It has been reported for example that the State Secretary for Education stated in a press release: "The Hungarian Government starts with the assumption that closing the achievement gap for the disadvantaged, including the Roma, requires assessing and addressing the problems facing an individual. We therefore support every institution which enables students with disadvantaged backgrounds to close the achievement gap, even if the institution only educates Roma children." www.errc.org/blog/separate-and-unequal-in-hungary-catching-up-and-falling-behind-on-roma-inclusion/78, Separate and unequal in Hungary: "catching up" and falling behind on Roma inclusion, 4 September 2015.

⁷⁹ Article XV (4): "By means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion" as amended by Article 21(1)e) of the Fourth Amendment to the Fundamental Law (25 March 2013).

140. The Advisory Committee notes the ruling of the European Court of Human Rights in the case *Horváth and Kiss v. Hungary*⁸⁰ of 29 April 2013. This judgment confirmed that Roma children have suffered wrongful placement in special (remedial) schools due to the systematic misdiagnosis of mental disability,⁸¹ which constituted a prima facie case of indirect discrimination. In this context, the Advisory Committee further notes that the authorities have taken general measures to prevent wrongful placement of children in special schools. In particular it is noted that new testing methods have been introduced to secure their objectivity and non-discriminatory nature.⁸² Furthermore, members of expert panels involved in the evaluation process were offered specialised trainings in order to modernise and to adopt uniform procedures and protocols, while the expert panels were reorganised. The steps taken seem to have led to a measure of improvement of the situation. Whereas the total number of children with special education needs seems to have stabilised in recent years at around 81,000, corresponding to just under 5% of all children attending school, the proportion of children with special education needs in integrated institutions is on the rise (over 52,000 in the school year 2012-2013) while the number of children educated in segregated institutions is falling (under 29,000 in the school year 2012-2013). Finally, the Advisory Committee notes that, in November 2014, a system of voluntary registration of ethnicity was introduced in all special education services.⁸³ The Advisory Committee notes however, that the measures which have been undertaken by the authorities have been considered by the Committee of Ministers of the Council of Europe inadequate and the monitoring of the implementation of the judgment is ongoing.⁸⁴

141. The lowering of the compulsory school-attendance age from 18 to 16, which was introduced by the National Public Education Act of 2011, raises serious concerns. Given the high rate of repetition of classes and the lack of entrenched culture of school attendance among Roma children, in particular young Roma girls, many will have left school by the age of 16 without completing primary education. This will impact very significantly on their employment prospects as most jobs require a completed 8th grade of education. The Advisory Committee notes, however, that the proportion of Roma girls who have left school before the age of 16 has halved in one generation in Hungary, to 33% in 2011.⁸⁵

142. A combination of the difficulties experienced in education results in only 1% of Roma children reaching tertiary education. The proportion of Roma university graduates is lower still due to a high dropout rate. The Advisory Committee welcomes information in this regard on the bonus system for university candidates from disadvantaged backgrounds and different

⁸⁰ See case of *Horvath and Kiss v. Hungary* (Application no. 11146/11), www.hudoc.echr.coe.int/eng/?i=001-116124.

⁸¹ See §§ 109-111 of the judgment.

⁸² In 2008, all operating expert committees were supplied with the standardised Wechsler Intelligence Scale for Children (WISC-IV Child Intelligence Test) which was standardised in Hungary on a representative sample of children.

⁸³ *Horváth and Kiss v. Hungary* (Application No. 11146/11) Supervision of the execution of the Court's judgments, www.wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442553&SecMode=1&DocId=2105580&Usage=2.

⁸⁴ Ministers' Deputies Notes on the Agenda (1243rd Meeting, 8-9 December 2015) www.wcd.coe.int/ViewDoc.jsp?id=2384793&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864.

⁸⁵ Roma survey – Data in focus Education: the situation of Roma in 11 EU Member States www.fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf, pg. 36.

tutoring initiatives undertaken by student organisations to offer academic help to Roma students.

143. The Advisory Committee notes that as of the school year 2014-2015, free kindergarten education for all children became compulsory from the age of three. It notes, however, that whereas the attendance is 94.7% of all children nationally, the figure for Roma children is only less than 50%. Such a low proportion of Roma children attending kindergartens cannot, in the view of the Advisory Committee be simply explained by the fact that a disproportionate number of Roma live in isolated small villages and that some of the children may be exempted from the obligation due to their mothers being homemakers.

144. Finally, the Advisory Committee wishes to commend the extraordinary efforts undertaken at the Gandhi school in Pécs and the considerable resources put at its disposal by the national and local authorities. This boarding school, which is attended almost exclusively by Roma children, most of whom come from disadvantaged backgrounds, is striving to achieve educational excellence for Roma children. The school teaches both Romani and Beash languages in addition to standard academic subjects and six Roma teachers are among the staff of 40 employed at this establishment. It notes, however, that the dropout rate, particularly in the first year is, according to the interlocutors of the Advisory Committee, very high. This is yet another confirmation that primary schools in very many cases fail to provide expected education to Roma children.

145. The Advisory Committee wishes to commend the continued operation of the Romology course available at the Education Department of the Pécs University, aiming to provide teachers with greater understanding of Roma culture, traditions and wider issues which have an impact on children's opportunities in education.

Recommendations

146. The Advisory Committee urges the authorities to take, as a matter of urgency, all necessary measures to end without further delay, practices that lead to the continued segregation of Roma children at school and to redouble their efforts to remedy other shortcomings faced by Roma children in the field of education.

147. The authorities must ensure that Roma children have equal opportunities for access to all levels of quality education. Measures should be taken to prevent children from being wrongfully placed in special schools. Placement in regular schools should be the rule. Special schooling should be reserved for exceptional cases only following diagnostic examinations based on appropriate testing methods that have been introduced with a view to securing objectivity and non-discrimination.

148. The Advisory Committee urges the authorities to ensure access to preschool facilities for all Roma children and guarantee that the curriculum in such kindergartens corresponds to the diverse needs and multilingual composition of the groups concerned.

Article 14 of the Framework Convention

Teaching in and of minority languages

Present situation

149. The Advisory Committee notes that the Fundamental Law of 2011 reaffirms in Article XIX the right of “nationalities living in Hungary [...] to be educated in their native languages”. Secondary legislation, such as the Act on the Rights of Nationalities and the Act on Public Education, provide a detailed framework for different models of teaching in and of minority languages, in accordance with the needs of the national minority communities.

150. The Advisory Committee notes that, in accordance with the Act on Public Education, a well-developed system of minority language education exists in Hungary, permitting students belonging to national minorities to receive instruction in or of their languages. Three basic models have been developed to meet different needs and expectations of national minorities. In “nationality schools” all subjects are taught in the language of a national minority; bilingual schools dispense teaching in such a way that sciences are taught in Hungarian, whereas arts and humanities are taught in the minority language; and, finally, a “nationality education component” consisting of teaching a national minority language and culture can be included in the school curricula of ordinary schools at the initiative of at least eight parents (in the case of kindergartens and primary schools) or 14 parents (in the case of secondary schools).

151. The Advisory Committee notes that in the school year 2011-2012 (the only year for which figures were provided), according to the information provided in the State Report, 17,806 children belonging to Bulgarian, Croat, German, Greek, Romanian, Ruthenian, Serb, Slovak and Slovenian minorities studied in 273 “nationality kindergartens”, 50,745 children in 348 “primary nationality schools” and 3,362 children in secondary “nationality schools”. Management of many of such schools has been taken over by national minority self-governments since the legal possibility was created in 2004 and the process is ongoing.⁸⁶ The Advisory Committee notes that, according to representatives of national minorities, the financial framework for operating “nationality schools” is sufficient as regards larger schools (teaching 150 or more children). Smaller schools often struggle with the amount of funding allocated by the Ministry of Human Capacities and are obliged to seek extra funding from the municipal authorities or private donors.

152. Bilingual schools, in accordance with the national core curriculum of 2012, are under the obligation to offer at least 50% of courses in a minority language with the remaining classes taught in Hungarian. In the schools which have opted to introduce a “nationality education component” the time frame for teaching national minority culture and languages has been increased to five hours per week in schools teaching Croat, German, Romanian, Serbian, Slovak and Slovenian languages, and to three hours in the case of Romani and Beash languages, with one extra hour allocated per week to teach minority cultures.

153. The Advisory Committee notes that this model of national minority language teaching is expanding rapidly, with reportedly a quarter of all schools in Hungary offering a “nationality education component”, partially on account of Hungarian students wishing to benefit from expanded language learning opportunities (in particular as regards the German language) but

⁸⁶ For details see State Report, pg. 108

also due to extra funding which is provided to such schools. In addition, the obligation to pass baccalaureate exams in two foreign languages, with all national minority languages qualifying, is an additional magnet attracting both the majority and minority students to schools with a “nationality component”. The Roma pedagogical programme has also been extensively introduced as a “nationality component” in schools with a large population of Roma children.

154. The Advisory Committee notes that, under the new 2011 Act on National Public Education, the municipal national minority self-governments, like churches and other ecclesiastical institutions, can establish (or take over from the state) and operate institutions providing preschool and school education for children belonging to a national minority. This possibility has been used by a growing number of municipal self-governments in particular to ensure greater degree of control over the local schools teaching in minority languages and thus to gain greater independence, in particular as regards self-administration, from Klebelsberg Institution Maintenance Centre (KLIK).⁸⁷ It has to be noted, however, that the room for manoeuvre of the self-governments remains limited due to the fact that the ownership of the buildings in which minority educational institutions reside remains with the municipality, the budget is determined by KLIK and the curricula are set by the Ministry of Education. The new opportunity for self-regulation is welcome by the self-governments as they, together with the school directors, can manage staff as well as both the curriculum-based and extra-curricular activities within their establishments.

155. The Advisory Committee notes the efforts of the Department of Education of the Ministry of Human Capacities to ensure an adequate supply of textbooks in languages of national minorities.⁸⁸ It notes, however, that, in particular as regards smaller ethnic groups, such as Armenians, there are no textbooks available in their languages. Also, the frequent changes to the school curricula make the existing textbooks obsolete, and put a strain on teachers and students alike. Furthermore it must be noted that numerically smaller minorities do not have the capacity to write or to translate in a limited time frame textbooks corresponding to the requirements of the valid curricula. In this context, the Advisory Committee notes that manuals and other teaching aids produced in the ‘kin-states’ are allowed as additional teaching aids in schools. In some cases, teachers are invited from the ‘kin-states’, although some representatives of national minorities have expressed reservations due to their limited awareness of cultural specificity of minority children and of the context of the Hungarian state.

156. Finally, the Advisory Committee is pleased to note the continued assistance of the German, Serb and Slovak pedagogical and methodological centres offered to institutions teaching their respective languages in Hungary.

Recommendation

157. Recalling that presence of minority languages in education is an essential part of diverse and multicultural societies, the Advisory Committee calls on the authorities to continue monitoring the situation, in consultation with the representatives of national minorities, to

⁸⁷ *Klebelsberg Intézményfenntartó Központ* (Klebelsberg Institution Maintenance Center (KLIK)), oversees over 4,000 schools, 1.2 million students, and 120,000 teachers. It has 200 regional offices (in every administrative unit *járás* (commune)). It reportedly employs 2,300 persons.

⁸⁸ Some projects to publish textbooks in minority languages are supported by the EU Social Fund (ESF).

assess whether the framework for teaching in and of minority languages corresponds to their actual needs and take the necessary steps to address any shortcomings.

Article 15 of the Framework Convention

Participation in public life and decision-making processes

Present situation

158. The Advisory Committee notes that enabling persons belonging to national minorities to be represented in parliament constituted one of the key recommendations made in the third Opinion. Measures taken to address the concerns of the Advisory Committee have been described in paragraph 9 of this Opinion. In particular, the Advisory Committee notes that all 13 recognised national minorities are represented in the National Assembly by elected nationality advocates, whose role is to raise minority concerns at the highest level of the legislative power. These advocates participate in the parliamentary elections as candidates on national minority lists and may be elected as regular members of parliament on a preferential basis (provided the national minority list on which they are running obtains at least a quarter of the votes necessary for an election of a political party candidate). Should the minority list be unsuccessful, the candidate who obtained most votes enters the parliament as a “nationality advocate”. In particular, they have the right to attend and to address committee and plenary meetings on issues pertaining to national minority protection in the National Assembly, to have access to official documents available to parliamentarians and to initiate legislation, which is highly appreciated. The Advisory Committee notes however, that the rules of procedure leave it to the discretion of the House Committee (Praesidium of the National Assembly) to decide on a case by case basis when the right to address the National Assembly shall be granted.

159. The Advisory Committee recalls that national minority self-governments have been a part of the representative and consultative mechanism for national minorities for almost twenty years in Hungary. The self-governments enjoy democratic legitimacy on account of their election by all registered national minority voters, and play an important role in the management of education establishments and cultural institutions. The Advisory Committee notes in this context that the relationship and clear division of competencies between the central organs of national minority self-governments and newly created nationality advocates needs to be carefully considered in light of the experience gathered in the first years of the functioning of the parallel structures.

160. Following the municipal elections of October 2014, all 13 recognised national minorities have established self-governments at the central level. At the county level, 60 self-governments have been established, with a further 2,100 self-governments at the municipal level (of which 1,100 have been established by the Roma). The Advisory Committee is pleased to note that in addition to managing their own educational and cultural matters, the national minority self-governments at the central level have to be consulted in the process of drafting any legislation which may impact the enjoyment of their rights.

161. In general, the Advisory Committee notes that together with the increased funding put at the disposal of national minority self-governments in recent years,⁸⁹ which is welcome, the authorities introduced greater control over the manner in which the money is spent, including through the imposition of more burdensome and time-consuming administrative procedures. This has put some self-governments (in particular the smaller ones) under strain, and forced their representatives to acquire new skills to conform to the regulations.

162. The Advisory Committee welcomes information of co-ordination among national minority self-governments which resulted at the central level in the establishment of the Association of National Minority Self-Governments (ONÖSZ) and other local consultative bodies, such as the Municipal Council of Nationalities in Pécs, have been established to speak on behalf of all minorities and be consulted on the disbursement of funding for minority related projects. The Advisory Committee considers that such initiatives increase visibility of minority issues and mitigate the risk of isolating minority policies within the minority self-governments.

163. Finally, the Advisory Committee welcomes the information on the continuing active role played by the Jewish Roundtable, composed of representative organisations of the Jewish community and Hungarian officials, in serving as a forum for discussing issues and finding solutions to issues affecting that community.

Recommendations

164. The Advisory Committee invites the authorities to review, in consultation with national minority representatives, the existing practice and to define clearly, in the procedures of the National Assembly, the nationality advocates' right to address the National Assembly.

165. The authorities should continue to work closely with national minority self-governments to ensure smooth transition and satisfactory future co-operation on all issues. They should also encourage all municipalities, where national minorities reside in substantial numbers, to establish councils of national minorities with the view to making the local decision-making processes more inclusive.

Effective participation in socio-economic life

Present situation

166. The socio-economic situation of most national minorities living in Hungary does not diverge from the majority population. With the exception of the Roma, persons belonging to various ethnic groups making up the Hungarian society are well integrated and participate fully in the economic, social and cultural life.

167. The Advisory Committee notes that in municipalities where at least 20% of the population belongs to a national minority, their ability to speak the "mother tongue" of the given national minority is taken into consideration when filling the positions of local civil servants and public sector employees as well as the positions of public notary and court

⁸⁹ According to the information provided by the Ministry of Human Capacities the budgetary allocations covering expenditures related to national minorities rose from 4 billion HUF in 2014, to 6 billion HUF in 2015 and 8 billion HUF in 2016.

bailliff.⁹⁰ The Advisory Committee regrets to note that no figures are available on how many municipalities apply this legal provision in practice and how many municipal employees have been recruited as a result.

168. Regrettably, Roma continue to be excluded from effective participation in social and economic life. The unemployment among Roma is a source of grave concern. Roma account for 25 to 30% of the registered unemployed (100,000-130,000 persons) and according to the EU Agency for Fundamental Rights research, 68% claim to have been the object of discrimination within the last five years in their efforts to find employment. Consequently, only 2% to 2.5% of the total number of employed people are Roma, although they constitute approximately 7% of the population of Hungary.⁹¹

169. Unemployed Roma participate in the public employment programme introduced in 2012 and from adult and vocational training schemes of which according to estimates based on self-declaration, they are the primary beneficiaries (see related comments under Articles 4 and 12). It has to be noted however that deepening cuts in the social benefits system in the last six years have had a disproportionate effect on Roma families. The Advisory Committee notes that following the most recent overhaul of the social benefits system in March 2015, the responsibility for disbursement of unemployment benefits and social allowances was transferred to the municipal authorities. Under the current regulation, the maximum length during which the unemployment allowance (officially called “employment substituting subsidy”) can be paid, has been reduced from nine to three months and only one person in a household is entitled to receive it.⁹² Even when supplemented by family and housing benefits, the overall income of the unemployed does not reach the minimum subsistence level.⁹³ The Advisory Committee notes with regret that this policy designed to rollback the welfare state runs contrary to the professed claim to help some half a million people out of poverty by 2020.⁹⁴

170. The health indicators for the Roma population are significantly lower than those of the majority population. According to the National Social Inclusion Strategy, Roma have at least a double illness rate as regards most frequently occurring internal medical conditions, compared with the entire population. In case of some illnesses, such as asthma and stomach illnesses, the illness rate for Roma is five times higher than the national average and in the case of three illnesses (impaired eyesight, iron-deficiency anaemia, and infectious lung diseases), it is ten times higher than the average. Consequently, the average life expectancy of Roma in Hungary is ten years shorter compared to the entire population. Although Roma, like all other Hungarian citizens, have access to free health-care services, most of the Roma (64.2%) never

⁹⁰ Act on the Rights of Nationalities, Article 6 § (2) “In localities where the ratio, as registered in the census, of a nationality reaches twenty per cent, at the request of the local nationality self-government concerned, in filling the positions of local civil servants and public sector employees as well as the positions of notary public and court bailiff, a person familiar with the mother tongue of the given nationality shall also be employed, subject to the observance of the general professional requirements”.

⁹¹ The National Social Inclusion Strategy: Extreme Poverty, Child Poverty and the Roma, pg. 44, www.romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF.

⁹² In Hungary poor families reduced to living on a quarter of subsistence income, The Budapest Beacon, 9 April 2015, www.budapestbeacon.com/public-policy/in-hungary-poor-families-reduced-to-living-on-a-quarter-of-subsistence-income/21592.

⁹³ *Létminimum*, 2013, www.ksh.hu/docs/hun/xftp/idoszaki/letmin/letmin13.pdf.

⁹⁴ The National Social Inclusion Strategy: Extreme Poverty, Child Poverty and the Roma, pg. 7.

consult doctors. The reasons for this alarming state of affairs include, according to Roma representatives, poor access to medical facilities in the most deprived areas, low awareness of health risks, in particular of smoking,⁹⁵ equally low awareness of necessity of preventive health-screening tests, discriminatory attitudes and lack of awareness of Roma sensibility as regards health care among health professionals.

Recommendations

171. The Advisory Committee urges the authorities to intensify measures aimed at promoting access to employment for Roma. Specific vocational training is needed to support the long-term unemployed and measures must be closely co-ordinated with Roma themselves at the central, regional and local levels.

172. The Advisory Committee calls on the authorities to continue their support, in consultation with Roma representatives, to guarantee equal access to health-care services for Roma, while paying due attention to the specific concerns of Roma women, by including specific preventive measures, increasing health literacy, conducting public-awareness campaigns and employing health mediators.

173. The Advisory Committee calls on the authorities to consider making a course on Romology a compulsory element of medical studies to make health professionals aware of Roma cultural sensibility as regards health care.

174. The authorities should collect data and monitor the implementation of legislative provisions on recruitment of municipal employees capable of speaking national minority languages.

Article 17 of the Framework Convention

Transfrontier co-operation

Present situation

175. The Advisory Committee notes that joint minority consultative committees have been established on the basis of bilateral treaties and cultural agreements with Croatia, Romania, Serbia, the Slovak Republic, Slovenia and Ukraine to act as fora for discussing issues affecting minorities on both sides of the border. Information on inclusion of representatives of national minority self-governments in the respective Hungarian delegations is particularly welcome. The Advisory Committee notes with interest that the protocols of the meetings are transferred to the central authorities and become the basis for national action plans. The Advisory Committee wishes nonetheless to recall, in that respect, that the protection of national minority rights in any state is primarily a responsibility of that state and in no case should be dependent on the condition of bilateral relations with neighbouring countries.

Recommendation

176. The Advisory Committee encourages the authorities to implement the existing bilateral agreements in the spirit of good neighbourliness, friendly relations and co-operation between states, without prejudice of multilateral fora and standards.

⁹⁵ According to the Strategy, 77.4% of the Roma population smoke, in contrast to 31.4% in the entire population.

III. CONCLUSIONS

177. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Hungary.

178. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.⁹⁶ In particular, they should take the following measures to improve further the implementation of the Framework Convention.

Recommendations for immediate action:⁹⁷

- promote tolerance and respectful attitudes amongst the majority population; bolster efforts to combat manifestations of intolerance, racism, xenophobia and hate speech present in Hungarian society including in the media and the political arena and monitor the situation more effectively; investigate and apply adequate sanctions when necessary;
- ensure that the Commissioner for Fundamental Rights is granted all the support needed to continue carrying out his role effectively, particularly as regards the enforcement of recommendations with a view to strengthening the Commissioner's competences; continue to make available the resources needed to operate efficiently and independently; reinforce the competences of the Deputy Commissioner responsible for the protection of the rights of nationalities by empowering the office holder to undertake investigations on the Deputy's own initiative;
- make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by the Roma; improve, in close consultation with Roma representatives the living conditions, access to health services and employment of the Roma; take necessary measures, as a matter of urgency and without further delay, to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy other shortcomings faced by Roma children in the field of education; ensure that Roma children have equal opportunities for access to all levels of quality education, in particular by preventing placement in "catching-up classes"; take decisive measures to prevent children from being wrongfully placed in special schools.

Further recommendations:⁹⁸

- continue to pursue an open and inclusive approach to the Framework Convention's personal scope of application ensuring that no arbitrary distinction exists in the enjoyment of rights protected under the Framework Convention; examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not afforded the protection offered by the Act on the Rights of Nationalities, including non-citizens where

⁹⁶ A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

⁹⁷ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

⁹⁸ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

appropriate, in the application of the Framework Convention; take due account of the principle of free self-identification when processing and interpreting data on ethnicity;

- continue improving the dialogue with the Jewish community, making it sustainable and making combatting anti-Semitism in public spaces the highest priority; prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, make sustained efforts to identify perpetrators and prosecute acts of vandalism and hate speech; consider amending the law so as to ensure full protection against racist crime;
- finalise and adopt the Nationality Policy Strategy 2014-2020; ensure that responsibilities of administrative entities involved in its implementation are clearly defined with the view of eliminating any possible overlapping;
- concentrate all necessary efforts and resources on implementing projects and activities constituting the National Social Inclusion Strategy 2011-2020; involve the Roma representatives and the concerned communities at all stages of planning, implementing and evaluating the outcomes of the Strategy;
- ensure that transfer of ownership of national minority cultural institutions to the national minority self-governments is accompanied by adequate safeguards which would guarantee their financial stability and sustainability allowing interrupted and unhindered functioning of the establishments in question;
- promote conditions and develop solutions conducive to a greater visibility and effective use of minority languages in public life; continue to encourage persons belonging to national minorities to use their own language when dealing with administrative authorities, by creating a more open and embracing environment for the use of minority languages; collect data and monitor the implementation of legislative provisions on recruitment of municipal employees capable of speaking national minority languages; review the administrative procedures and practices applicable to the display of topographical indications in minority languages; take proactive measures to encourage the municipalities inhabited by a substantial number of persons belonging to a national minority to display such signs;
- consider carefully and clarify in consultation with representatives of national minorities, the relations between “nationality advocates” and national minority self-governments in order to ensure the most effective representative and consultative mechanisms for all national minorities;
- promote the establishment of Municipal Councils of Minorities, and their effective and meaningful functioning, in all municipalities where national minorities reside in substantial numbers, with the view to making the local decision-making processes more inclusive.