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

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**Third Opinion on Montenegro<sup>1</sup>  
Adopted on 7 March 2019**

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<sup>1</sup> This opinion remains subject to editorial revision until its publication.

## EXECUTIVE SUMMARY

Montenegrin society is characterised by a general climate of tolerance, with no single ethnic group making up the majority of the population. Efforts are directed at strengthening inter-cultural relations and social cohesion. The level of funding provided to cultural projects and consultative mechanisms of minority communities is set at a high level, with many different state sources of funding open to national minorities. Provision for both public and private media in minority languages is considerable, with national and local networks offering programming in minority languages, particularly Albanian. National Minority Councils play a key role in protecting and promoting the rights of their respective minorities, but there is a need for cooperation among Minority Councils so that their work does not lead to unnecessary divisions between respective national minorities. There is a good legal anti-discrimination framework, including an Ombudsperson in whom trust appears to be growing, and legislation on discrimination and language rights which has recently been reviewed. Work remains to be done, however, to ensure that there is greater awareness of what discrimination is and the remedies available, and to ensure the effective implementation of legislation, for example the right to proportional representation in public services, and of action plans, which receive no extra-budgetary resources and often rely on NGOs to fund and carry out objectives.

There is a risk that emphasis may be placed upon differences between religious and minority groups, often reflecting the wider geopolitical and historical circumstances, rather than finding common ground. This is particularly manifest in education, where there is a preference for separate depending on the language taught – i.e. where one group of students is taught in the state language, and another group in the minority language – which does not foster intercultural dialogue. Montenegro is a multi-faith society, but, as the authorities are well aware, there is a danger of unresolved issues between religious groups growing more marked, with instances of discord between religious groups becoming more notable.

Very welcome progress has been made on resolving the issue of displaced persons, mostly Roma and Egyptian refugees who arrived in Montenegro from Kosovo\* in the late 1990s. The regularisation of the legal status of these persons is almost complete, and the housing situation for many of them has improved substantially. Nevertheless, urgent efforts need to be focused on ensuring that Roma and Egyptian communities as a whole, both Montenegrin Roma and Egyptians and displaced persons, have effective access to adequate housing, health care, social protection, high quality education and sustainable employment, and can effectively participate in economic and public life, and ensuring that those persons whose status remains unclear have it regularised.

### Issues for immediate action

- **take measures to improve the social and economic situation of Roma and Egyptians, particularly by increasing employment opportunities and ensuring effective access to health care, education and housing, in close cooperation with the communities concerned and based upon regularly and systematically gathered, comprehensive, reliable data on the situation of persons belonging to these communities;**
- **take further steps to improve the attendance of Roma and Egyptian children in education, whilst not reducing the standard of education, including through community outreach emphasising the importance of education and tackling, among other problems, early forced marriage. Long-term support to the Roma mediators programme across pre-school and primary education should be provided, irrespective of the number of students, and the authorities should ensure that mediators are employed on secure, long-term contracts;**
- **reintroduce the subject of civic education in the compulsory curriculum; introduce compulsory teacher training on the use of the 20% of the curriculum reserved for education on the**

**local area to ensure that tolerance, intercultural dialogue and mutual respect are among the core principles of education policy and practices; design comprehensive and long-term measures to enhance the availability of state language teaching in the public education system through a balanced approach that contains parallel measures to adequately protect and promote the languages of national minorities, including through the introduction of multilingual teaching methodology;**

➤ **extend affirmative action for numerically small national minority communities, in particular Roma, to ensure equal treatment between such communities in respect of thresholds in the electoral legislation.**

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

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

**THIRD OPINION ON MONTENEGRO**

1. The Advisory Committee adopted the present Opinion on 7 March 2019 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 State Report of Montenegro (hereinafter the State Report), received on 16 June 2017, other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Podgorica, Kotor and Ulcinj/Ulqin, from 27 to 30 November 2018.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Montenegro. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on Montenegro, adopted on 28 February 2008 and 19 June 2013 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 14 January 2009 and 4 March 2015.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Montenegro.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Montenegro 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.<sup>2</sup> It also invites the authorities to translate the present opinion and the forthcoming Committee of Ministers' resolution into Montenegrin and minority languages, and to disseminate it widely among all relevant actors. The Advisory Committee welcomes the wish expressed by the authorities to hold a follow-up event after the publication of this third cycle opinion. It considers that a follow-up dialogue to review the observations and recommendations made in this opinion would be beneficial.

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<sup>2</sup> On 16 April 2009, the Committee of Ministers amended the rules for the publication of the Advisory Committee's Opinion and other monitoring documents with the aim of increasing transparency and of sharing the information on the monitoring findings and conclusions with all the parties involved at an early stage (see Resolution CM/Res(2009)3 amending Resolution (97) 10).

## I. MAIN FINDINGS

### Monitoring process

6. The authorities continued to pursue a constructive and positive approach to the application of the Framework Convention. Following the adoption of the second Opinion, the authorities opted for publication of the Opinion with their comments. The Advisory Committee welcomes the organisation of a ‘follow-up’ seminar in Podgorica on 7 February 2017, which, through a discussion with minority representatives, government departments and members of the Advisory Committee, helped to disseminate the results of the second monitoring cycle. A training session on drafting the state report was also organised in cooperation with the Council of Europe at the end of 2016.

7. The Advisory Committee notes that the third State Report of Montenegro<sup>3</sup> (hereafter State report) was prepared in consultation with national minority representatives, including respective National Minority Councils and Non-Governmental Organisations.

8. The Advisory Committee welcomes the highly constructive spirit of cooperation shown by the authorities before, during and after the monitoring visit.

### General overview of the implementation of the Framework Convention after three monitoring cycles

9. Montenegro maintains a positive approach to the application of the Framework Convention. In particular, the Advisory Committee notes general progress in the legislative and institutional framework, in the funding available for minorities and the process by which it is applied for, in data gathering and in the regularisation of the status of displaced persons<sup>4</sup> from Kosovo\*. Montenegro recognises the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities,<sup>5</sup> who each are represented by a National Minority Council, each of which continues to pursue their aims of promoting the interests of their respective minorities. In exchanges of information with the Advisory Committee, the representatives of the authorities had a genuinely co-operative approach, particularly from within the Ministry of Human and Minority Rights. A number of international organisations maintain a presence in Montenegro and an interest in its policy on minorities, especially Roma and Egyptian displaced persons, particularly in the context of its on-going accession process to the European Union.

10. The citizenship criterion for persons to be recognised as a national minority has not been lifted, despite recommendations in previous cycles to the contrary, which means that legally only citizens of Montenegro fall within the scope of application of the Framework Convention.

### Legislative and institutional framework

11. The Constitution of Montenegro (Article 8) prohibits direct and indirect discrimination on any grounds. The Law on the Prohibition of Discrimination was amended twice during the cycle, in 2014 and 2017, criminalising hate speech, and most notably, providing for the ‘promotion of equality’, stating that steps which aim to address the inequality and disadvantage experienced by, *inter alia*, persons belonging to national minorities, should not be considered discrimination as prohibited by the law.

<sup>3</sup> [Third Report submitted by Montenegro.](#)

<sup>4</sup> The Advisory Committee will use ‘displaced persons’ to refer to those persons previously referred to, in the ACFC Second Opinion and by the authorities of Montenegro in the third State Report of Montenegro, as internally displaced persons (IDPs). UNHCR Montenegro considers these persons as refugees.

<sup>5</sup> According to the most recent population census (2011), Montenegrins make up 44.98% of the population, Serbs 28.73%, Bosniaks 8.65%, Albanians 4.91%, Muslims 3.34%, Roma 1.01%, Croats 0.97%, and Egyptians 0.33%.

12. Trust in the institution of the Protector of Human Rights, the ombudsperson, has increased during the monitoring period, and the caseload has increased accordingly. Its financial independence is not assured, however, since it must get its budget approved by the Ministry of Finance, and its financial resources may not be sufficient for it to carry out its mandate for awareness raising, launching independent inquiries, and undertaking research. Despite recommendations to amend the method of appointment, the Protector can still be appointed or dismissed by a simple majority of parliament, which may leave the office in a position of precariousness. A rulebook to be used across government to collate data on discrimination cases is not being adhered to, making it difficult for the Protector to put together a comprehensive picture of discrimination across the state administration. There is also no equality body separate from the Protector in Montenegro, which means the Protector's lack of power of sanction could restrict its ability in its function as an equality body to adequately remedy discrimination.

### **Preservation and promotion of culture**

13. There is a good framework for the distribution of funding to preserve and promote minority cultures. Concerns from within the government about the integration and cohesion of society have led to a more intercultural approach to project financing through the Fund for the Protection and Realisation of Minority Rights (hereafter the Fund). The first projects which were allocated funding in 2018 from the Fund after the restructuring show an increase in the number of projects engaging with various minority groups, which should work towards the promotion of intercultural dialogue. Despite the positive reforms to the Fund, issues remain on the transparency of its work and its evaluation of projects funded. National Minority Councils had their funding doubled, but were barred from applying for project finances from the Fund. There is a lack of clarity surrounding the display of symbols of other states, with a law from the 1990s still in force which prohibits such a display, and which should be dealt with in forthcoming legislation.

### **Tolerance and intercultural dialogue**

14. The authorities carry out, in cooperation with international organisations and partners, data gathering on so-called 'ethnic distance' and on the public's opinion towards certain groups. This data demonstrates intolerance towards the Roma most prominently, but also the numerically small Jewish community. Between 2010 and 2017, social distance between almost all groups increased, and this has contributed to the Advisory Committee's view that divides between communities may be deepening and becoming more marked. Incidents of religious discord between different Orthodox Churches have been noted, with the police having to intervene, allowing one denomination to practice inside and one outside the churches in question. Hate speech is criminalised, but there is little monitoring of social media by the authorities because no agency has such a mandate.

### **Education**

15. The right to education in one's own language in public institutions is guaranteed by Article 79 of the constitution, as well as the right to have the history and culture of minority communities included in the general curriculum. In the Law on General Education, 20% of the curriculum is 'open content' which concerns 'affirming the value of local culture.' This can be used to educate about the history and culture of persons belonging to national minorities, according to the authorities. The Ministry of Education has little oversight into how this 20% is used, but it acknowledged that efforts were needed in order to ensure that this time was being used effectively. To the concern of the Advisory Committee, the subject 'civic education', which covers human rights and integration, is no longer a compulsory subject as it was in the previous monitoring cycle.

16. In terms of teaching in and of minority languages, Albanian language education is provided in areas where Albanians make up the majority of the local population, and in Podgorica. There are a number of bilingual schools teaching in Albanian and Montenegrin languages, but this does not indicate that students receive an equal numbers of hours of teaching in each language, but rather that some pupils take Albanian as their language of instruction, whilst others take Montenegrin, generally depending on their ethnic background. This creates two separate streams of monolingual education, although students with Montenegrin as their language of instruction may take Albanian as an elective subject, and for classes with Albanian as the language of instruction the learning of Montenegrin is compulsory.

### **The Situation of the Roma and Egyptians**

17. Compared to the previous monitoring cycle, the situation of the Roma and Egyptians, particularly the displaced persons, has improved substantially. The Konik camp is officially closed, with new durable housing being constructed at the site – although a few families still were not rehoused. Elsewhere in the country, clusters of housing issues persist for displaced Roma and Egyptians and Montenegrin Roma and Egyptians alike, often due to their living in informal settlements. This often leads to a lack of basic sanitation. Access to health care is available to everyone in Montenegro, but efforts are required to raise awareness of health issues within Roma and Egyptian communities to ensure effective access. This is particularly the case in the Konik area, where reproductive health and drug use may become a significant issue in the coming period, and where efforts will be required to ensure social integration.

18. Regarding education, the situation is improving for Roma and Egyptians, especially around Konik where the previously segregated preschool is now closed. Nevertheless, efforts are needed to raise awareness of the importance of education at all stages, and the dropout rate for Roma and Egyptians is still high. A successful programme of Roma mediators was carried out in Tivat, but is only being slowly rolled out across the country. The authorities are aware that Roma and Egyptians are more likely to be unemployed, and undertake programmes to get persons belonging to Roma and Egyptian communities into employment, but more comprehensive and coordinated efforts are needed.

### **Effective participation**

19. Certain minorities are well represented in government, and the Croats have a lower threshold than other minorities for elections to the parliament; the Roma, however, do not, despite being of similar numerical size. In general, minorities are underrepresented in public services, especially Roma, although other minorities are better represented in local government administrations. Unemployment data disaggregated by ethnicity is unavailable, although estimates are made for Roma and Egyptian communities. Comprehensive data gathering may allow for further precision and for remedies such as employment programmes to be more effective.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Personal Scope of Application of the Framework Convention

##### *Recommendations from the two previous cycles of monitoring*

20. In previous monitoring cycles, the Advisory Committee called on the authorities to consider amending the term ‘national minority’ as defined in the Law on Minority Rights and Freedoms (hereafter the Law on Minority Rights) without limiting the personal scope of application to citizens only, and encouraged the authorities to continue an open dialogue with representatives of national minorities mentioned as ‘others’ in the Preamble to the constitution who are not expressly recognised by law, with a view to considering their inclusion within the scope of application of the Framework Convention.

##### *Present situation*

21. The scope of application is set out in two key pieces of legislation: the constitution, where the constituent groups of Montenegro are listed in the preamble: ‘The determination that, as free and equal citizens, persons belonging to nations and national minorities living in Montenegro: Montenegrins, Serbs, Bosnians, Albanians, Muslims, Croats and others, we are loyal to the democratic and civil state of Montenegro’;<sup>6</sup> and the Law on Minority Rights which defines national minorities as ‘any group of citizens of Montenegro, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics different from those of the rest of the population, being historically tied to Montenegro and motivated by the wish to express and maintain their national, ethnic, cultural, linguistic and religious identity.’<sup>7</sup>

22. Unfortunately no formal changes were made to the scope of application of the Framework Convention and Montenegro continues to apply the citizenship criterion to minority recognition, but the Advisory Committee welcomes the flexible approach the authorities continue to take towards the scope of application of the Framework Convention in practice, *de facto* offering Roma an equivalent level of protection as the national minorities mentioned in the constitution, notably through a National Minority Council (hereafter Minority Council). Notwithstanding, the Advisory Committee takes note of the wish of the Roma Minority Council to have Roma named in the constitution as one of the constituent peoples of Montenegro, rather than being included under ‘others’. It recalls in this context that ‘[b]eginning with the free self-identification of individuals who are acknowledged by society as forming a distinct – albeit equally valued – minority, access to rights is [...] granted to promote and preserve the practices by which the group defines itself, leading in some cases to the inclusion of the minority in formal mechanisms of national minority protection. Thus, official recognition as a national minority or the granting of a specific status, do not constitute the beginning of the process of minority rights protection, nor are they essential for the application of the Framework Convention [...]. Recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.’<sup>8</sup>

<sup>6</sup> Full text of the Constitution of Montenegro available at: <http://www.skupstina.me/images/documents/constitution-of-montenegro.pdf>.

<sup>7</sup> Law on Minority Rights and Freedoms (2017), Article 2.

<sup>8</sup> [ACFC Thematic Commentary No.4](#): “The Framework Convention: a key tool to managing diversity through minority rights. The Scope of Application of the Framework Convention for the Protection of National Minorities”, adopted on 27 May 2016, para.28.

23. According to Article 33 of the Law on Minority Rights and Freedoms, a National Minority Council serves ‘to preserve [national minorities’] overall national identity and improve their rights and freedoms’. The Regulations on the establishment of Minority Councils specify that, for the smallest national minority groups, i.e. those which make up less than 3% of the population, establishing a Minority Council requires 510 signatures from persons self-declaring as part of that community.<sup>9</sup> In practice this means that most of the other national minority communities represented in the census from 2011 would not be able to establish a Minority Council, with the most notable exception being persons belonging to the Egyptian community, who, according to the last census (2011), number over two-thousand people,<sup>10</sup> and are currently not represented by a Minority Council.<sup>11</sup>

24. The Advisory Committee recalls that the Framework Convention’s application to a specific group does not require a specific legal status for such a group of persons, as it considers access to minority rights more important than questions related to the formal status of a community or group. It notes that this signature threshold for Minority Councils should not limit the rights of numerically smaller minorities provided for in the Framework Convention, since, according to Article 3 of the Law on Minority Rights, ‘members of minority nations and other minority national communities can exercise their rights and enjoy freedoms individually or in community with others’. There are nevertheless other situations in which minority rights, such as topographical indications in minority languages, may be restricted by a 5% threshold, although the establishment of a National Minority Council is not a prerequisite for the exercise of minority rights. The Advisory Committee expects the authorities to maintain an open dialogue with representatives of other persons self-identifying as belonging to national minorities, who are not expressly recognised by the law, and to consider the possibility of including them within the scope of application of the Framework Convention (principally the Egyptian community).

25. The definition of ‘national minority’ contained within the Law on Minority Rights has not been harmonised with the constitution’s wording, so as to not restrict its definition to citizens only. The Advisory Committee recalls that ‘the inclusion of the citizenship requirement may have a restrictive and discriminatory effect [...]’.<sup>12</sup> It welcomes the fact that the authorities display flexibility and openness, notably with regard to Roma and Egyptian displaced persons, but finds it regrettable that the situation has not been clarified. Given Montenegro’s situation vis-à-vis the issue of citizenship, notably among Roma who may be stateless or non-citizens with rights to reside (see Article 4), the Advisory Committee recalls that ‘the personal scope of application [of the Framework Convention] should, where appropriate, also extend to non-citizens, particularly where exclusion on grounds of citizenship may lead to unjustified and arbitrary distinctions, such as when such exclusion concerns stateless persons belonging to national minorities who permanently reside on a given territory.’<sup>13</sup>

26. The Law on Minority Rights defines national minorities, in part, as ‘being historically tied to Montenegro’. Although no minority groups complained of being unrecognised by the Montenegrin authorities due to this criteria, the Advisory Committee wishes to emphasise its principled position that

<sup>9</sup> Regulations for Election of Members of Council of Minority Nation or other Minority National Community, Official Gazette of Montenegro”, no. 31/06, 51/06 and 38/07 and "Official Gazette of Montenegro", no. 002/11, 008/11, and 031/17.

<sup>10</sup> 2011 Census data available online at <https://www.monstat.org/eng/page.php?id=393&pageid=57> (retrieved 8/1/2019).

<sup>11</sup> The Advisory Committee notes that, most notably, education, health and social policy, including housing policy, is frequently designed and implemented for the Roma and Egyptian communities jointly, and that supporting statistics do not distinguish between the two communities. In such cases, without prejudice to the scope of application of the Framework Convention in Montenegro, the Advisory Committee, both in its analysis and recommendations, will also refer to both Roma and Egyptians.

<sup>12</sup> [ACFC Thematic Commentary No.4](#), adopted on 27 May 2016, para.29.

<sup>13</sup> [ACFC Thematic Commentary No.4](#), adopted on 27 May 2016, para. 30; see also [ACFC Thematic Commentary No.3](#) “The Language Rights of Persons belonging to National Minorities under the Framework Convention”, adopted on 24 May 2012, para.15.

'any temporal restrictions should be regarded flexibly and that distinctions in treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust'.<sup>14</sup> Therefore, it cautions against the use of 'historical ties' to limit minority rights to a certain group.<sup>15</sup>

#### *Recommendation*

27. The Advisory Committee reiterates its call on the authorities to consider lifting the potentially limiting criterion of citizenship contained in the Law on Minority Rights, which may have a discriminatory effect.

### **Data Collection**

#### *Recommendations from the two previous cycles of monitoring*

28. In previous monitoring cycles, whilst welcoming the methodology and the open-ended, optional questions on ethnicity, first language and religion, the Advisory Committee cautioned against relying too heavily on the census data as a basis for the exercise of minority rights, due in part to the large fluctuations in numbers, particularly of persons identifying as Roma, from the previous population census in 2003. The Advisory Committee further invited the authorities to consult persons belonging to national minorities on the formulation of questions on ethnic affiliation and language spoken in future population censuses.

#### *Present situation*

29. Reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities, for helping to preserve and assert their identity as well as for addressing their needs.

30. Since the adoption of the previous opinion,<sup>16</sup> there has been no population census held in Montenegro.<sup>17</sup> In addition to the population census, the authorities regularly carry out complementary surveys aiming at the collection of disaggregated data on representation in public services. For instance, the Advisory Committee notes an annual survey of public service employees, disaggregated by ethnicity, and a survey of the Roma in the Framework of the Strategy for Inclusion 2016-2020 (this is dealt with more substantially in Article 15). The Advisory Committee welcomes this practice, and encourages the authorities to continue to regularly collect and analyse data from multiple sources.

31. Population statistics should be collected regularly and should be complemented with information gathered through independent qualitative and quantitative research. They should be carefully analysed in consultation with minority representatives, in particular when using statistics as the basis for the applicability of minority rights. The Advisory Committee's caution against relying too heavily on the data from the 2011 census remains, particularly with regard to the Roma population whose numbers have tended to fluctuate over time,<sup>18</sup> but it welcomes such a data-based approach to policy-making, especially in conjunction with data collected through independent and government surveys.

<sup>14</sup> [ACFC Thematic Commentary No.4](#), adopted on 27 May 2016, para.31.

<sup>15</sup> [ACFC Thematic Commentary No.4](#) notes that it follows by implication from Articles 10.2, 11.3, and 14.2 of the Framework Convention that the length of residency is of relevance only to those provisions but not to the application of the Framework Convention as a whole.

<sup>16</sup> See ACFC Second Opinion on Montenegro, ACFC/OP/II(2013)002, for details on 2011 population census, p.12.

<sup>17</sup> See State report, p.8 for full breakdown of all nationalities, including data from the 2003 and 2011 population censuses. According to the previous population census (2011), Montenegrins make up 44.98% of the population, Serbs 28.73%, Bosniaks 8.65%, Albanians 4.91%, Muslims 3.34%, Roma 1.01%, Croats 0.97%, and Egyptians 0.33%. As well as these groups, a wide range of multiple affiliations were indicated, for example Bosniaks/Muslims (0.03%), Montenegrins/Serbs (0.30%).

<sup>18</sup> See the 2003 population census compared to the 2011 census, State report, p.8.

32. The Advisory Committee recalls that the right to free self-identification is a cornerstone of minority rights and applies in each data collection exercise separately.<sup>19</sup> The Advisory Committee notes the intention of the authorities that the next population census in 2021 should contain open, optional questions on ethnicity and language,<sup>20</sup> as was the case in 2011.<sup>21</sup> The Advisory Committee also expects that, as was the case in 2011, census forms and explanatory notes will be available in minority languages, and that persons belonging to national minorities, including Roma, will be enlisted and trained as census interviewers.<sup>22</sup>

#### *Recommendation*

33. The Advisory Committee reiterates its recommendation to the authorities to ensure that minority representatives are consulted during the planning of the next population census, due to take place in 2021, particularly on questions of ethnic affiliation, religion, and first language.

### **Article 4 of the Framework Convention**

#### **Legal and Institutional Framework for combating discrimination**

##### *Recommendations from the two previous cycles of monitoring*

34. The Advisory Committee encouraged the authorities to review the Law on the Prohibition of Discrimination in order to make it fully compatible with international human rights standards, as well as to create a genuinely independent, specialised body dealing with discrimination. The authorities were invited to monitor the implementation of the Law on the Prohibition of Discrimination, to ensure that existing remedies open to those who have been subjected to discrimination are known, available and effective.

35. The Advisory Committee also urged the authorities to ensure that the office of the Protector of Human Rights had the appropriate and necessary human and financial resources, in order to guarantee the independence of its work and ensure that it achieved its potentially important role in identifying and combating discrimination, and that the public be made aware of this role through public awareness campaigns with a targeted focus on persons belonging to national minorities.

##### *Present situation*

36. The Constitution of Montenegro (Article 8) prohibits direct and indirect discrimination on any grounds. The Law on the Prohibition of Discrimination was amended twice over the reporting period, in 2014 and most recently in 2017, bringing the legal framework closer to European Union Directives. Most notably, the amended law provides for the 'promotion of equality', stating that steps which aim to address the inequality and disadvantage experienced by, *inter alia*, persons belonging to national minorities, should not be considered as discrimination as prohibited by the law; this is also in line with the Framework Convention. The Advisory Committee welcomes the 2014 amendment to the Law on the Prohibition of Discrimination which introduced a specific provision (Article 9a) combating hate speech (see Article 6). The forthcoming amendments<sup>23</sup> to Article 42a of the Criminal Code of

<sup>19</sup> See [ACFC Thematic Commentary No.4](#), adopted on 27 May 2016, para. 9.

See also, *inter alia*, European Court of Human Rights Grand Chamber judgment in the case of Molla Sali v. Greece, no. 20452/14, § 157, 19 December 2018, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-188985%22%5D%7D>.

<sup>20</sup> See also United Nations Economic Commission for Europe (UNECE) Recommendations for the 2010 and 2020 Censuses; see [Conference of European Statisticians Recommendations for the 2020 Censuses of Population and Housing](#), (para 700 to 712).

<sup>21</sup> 2011 population census form (in Montenegrin), see question 13 on 'national or ethnic affiliation' and 15 on 'mother-tongue': <https://www.monstat.org/userfiles/file/popis2011/POPISNICA%202011.pdf>

<sup>22</sup> See ACFC Second Opinion on Montenegro, ACFC/OP/II(2013)002, para.44.

<sup>23</sup> See proposed amendments in State report, p.69.

Montenegro should more explicitly and thoroughly recognise that when a crime is committed out of hatred or against a vulnerable group, the court will consider it an aggravating circumstance.<sup>24</sup> Nevertheless, the Advisory Committee considers that there are still gaps in the legislation, particularly based on ECRI's General Policy Recommendations (GPR) No. 2 and 7, including, *inter alia*, discrimination by association and the obligation to suppress public financing of organisations or political parties which promote racism.<sup>25</sup>

37. The new amendments to the law have increased the penalties for both natural and legal persons who commit acts of discrimination (1 000 - 20 000 EUR for legal persons, 100 - 2 000 EUR for natural persons, with specific penalties for natural persons whilst working in local or state government or in a private legal person, i.e. the legal and natural person are both fined), and provided greater clarity on certain types of discrimination, notably Article 17 on racial discrimination, Article 17a on the grounds of religion or belief, and Article 19 on the grounds of 'gender identity, sexual orientation and/or intersexual characteristics'.<sup>26</sup> According to the authorities, since 2010, eight criminal cases on discrimination were prosecuted, with six cases leading to suspended sentences of short prison sentences, one leading to the offender being remanded in a medical facility, and one acquittal.<sup>27</sup>

38. A body designated for the promotion of equal treatment of all persons<sup>28</sup> has not been set up independently of the Protector of Human Rights, the ombudsperson institution, which also has the legal mandate of an equality body to provide independent assistance to victims of discrimination in pursuing their complaints, and to conduct research. Whilst it is welcomed that the Protector of Human Rights has these capacities, further work remains to be done on the implementation of these capacities, particularly – as the European Commission for Racism and Intolerance noted in 2017 – with regard to financial resources for conducting research activities and publishing relevant information for awareness-raising activities,<sup>29</sup> which together form two out of three of the competencies of equality bodies listed in Article 13. (See also the European network of legal experts' report on non-discrimination 2017;<sup>30</sup> the Advisory Committee raised concerns about its financial resources in 2012.<sup>31</sup>)

39. The Advisory Committee is concerned that the Protector as an equality body does not have the power of sanction, nor are its decisions binding, but if a legal person fails to respond to its decision or

<sup>24</sup> In this regard, the Advisory Committee notes that the Committee of Ministers of the Council of Europe considers the judgement on *Alković v Montenegro* executed (CM/ResDH(2018)384). It concerned a series of apparently ethnically and/or religiously motivated attacks against Mr Alković, who is a Roma and a Muslim, by his neighbours in 2009 when he was living in Podgorica. Mr Alković complains about the authorities' failure to effectively investigate the series of attacks against him. The Court held that there had been a violation of Article 8 in conjunction with Article 14 of the Convention. Judgment of 5 December 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-179216>.

<sup>25</sup> See Recommendation 2 in List of Recommendations in [ECRI's second report on Montenegro](#), adopted 20 June 2017, and §12: 'the authorities [...] should i) include discrimination by association, ii) introduce a legal provision placing public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions, iii) include the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, and iv) provide for the obligation to suppress public financing of organisations or political parties which promote racism.'

<sup>26</sup> See [ECRI's second report on Montenegro](#), adopted 20 June 2017, for analysis of 2014 amendments.

<sup>27</sup> Information transmitted by the authorities: In 2013, one criminal offense - violation of the freedom of religion and religious worship, (Article 161 Criminal Code of Montenegro); In 2014, four criminal offenses - inciting national, racial and religious hatred (Article 370 Criminal Code of Montenegro); In 2015, one criminal offense - racial and other discrimination. (Article 443 Criminal Code of Montenegro). Information on outcomes provided by the authorities to the secretariat of the Framework Convention, 7 February 2019.

<sup>28</sup> European Union Racial Equality Directive, Article 13, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>.

<sup>29</sup> See [ECRI's second report on Montenegro](#), adopted 20 June 2017, p.27, para. 81. See also OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, of 19 October 2011, adopted by the Venice Commission at its 88th Plenary Session (14-15 October 2011), paras. 17-18. The matter of the Human Rights Protector's independence was also raised in the 2018 [EU Progress Report on Montenegro](#), p.4; p.24 on financial resources; p.27 for strengthening capacities.

<sup>30</sup> [European network of legal experts in gender equality and non-discrimination](#), Country Report Montenegro, 2017.

<sup>31</sup> See ACFC Second Opinion on Montenegro, ACFC/OP/II(2013)002, paras. 64-66.

recommendation within a timeframe set by the Protector, the Protector can refer the matter to a superior authority or address the parliament or the public with its findings.

40. The amendments to the Law on the Prohibition of Discrimination of 2014 expanded the Protector's scope of competencies, allowing it, amongst other things, to conduct conciliation proceedings between the complainant and the authority, business or other legal person complained against, collect and analyse data on discrimination cases, and promote anti-discrimination to the public in general.<sup>32</sup>

41. The Protector of Human Rights was awarded a B-status in 2016, according to the Paris Principles.<sup>33</sup> It did not achieve A-Status because the budget for the Protector's office needs approval by the Ministry of Finance each year (Paris Principle B.1) and because the appointments procedure is not sufficiently transparent – there is no public call for applications, for example.<sup>34</sup> Awareness of the work of the Protector of Human Rights among the population appears to be rising, as well as trust in the Protector's office thanks to recruitment from civil society, as one of the Advisory Committee's interlocutors explained, with year-on-year increases in caseload for the Protector's anti-discrimination department. In a survey conducted in the framework of the Council of Europe's PREDIM 'Support to the National Institutions in Preventing Discrimination in Montenegro' in 2017, it was found that the Protector was seen as contributing the most to the fight against discrimination, with 51% of those surveyed agreeing.<sup>35</sup> In 2016, 144 complaints were brought to the Protector's attention in the anti-discrimination department. In 2017, 135 cases were reported to the department, with six citing discrimination on the grounds of their status as a minority, and two on multiple religious/national affiliation. In 2018, the anti-discrimination department received 146 complaints. Compared to 2015, when the anti-discrimination department received 83 complaints, this is a noteworthy increase and indicates a growing awareness of discrimination and of the Protector.<sup>36</sup>

42. Nevertheless, interlocutors of the Advisory Committee indicated that the caseload is still lower than could be expected due in part to a continuing lack of awareness of the Protector's work and of discrimination. The Advisory Committee takes note of surveys carried out by the Ministry for Human and Minority Rights biennially, which in 2015 suggested a striking disparity between the perception of discrimination in different minority communities, and the lack of perception in particular in the Roma community, generally considered by the population in general to be the group most exposed to discrimination.<sup>37</sup> The Advisory Committee recalls that the implementation of the legislative framework for combating discrimination would be strengthened if the Ombudsperson's work were the subject of awareness-raising campaigns aimed at society as a whole and especially at groups most exposed to discrimination.

43. The current government allotment of staff under the 'staff scheme' for the Protector's office is now complete, with 33 members of staff. Interlocutors indicated that this was sufficient, but that

<sup>32</sup> See Article 15 [Law on Amendments to the Law on the Prohibition of Discrimination](#), amending Article 21 of the Law on the Prohibition of Discrimination.

<sup>33</sup> See rankings of Global Alliance for National Human Rights Institutions of 8 August 2018, p.11: <https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%288%20August%202018.pdf>.

<sup>34</sup> See report by Global Alliance for National Human Rights Institutions Accreditation sub-committee: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>.

<sup>35</sup> [Discrimination Patterns in Montenegro](#), Prof. Miloš Bešić.

<sup>36</sup> Figures given to the Advisory Committee by representatives of the Protector of Human Rights during the country visit in November 2018.

<sup>37</sup> State report, ps.45-46. Percentages who believe discrimination is expressed toward national minorities: Croats (57.2%), Muslims (48.6%), and Albanians (38.3%), followed by Serbs, Bosniaks, Montenegrins whilst 80% of Roma believe that discrimination is generally not expressed, or is not expressed at all towards national minorities. According to the survey, the general population is of the opinion that the Roma are the most discriminated against, with national minorities falling in the 'medium discriminated groups'.

resources elsewhere were lacking. Greater financial resources, it was indicated, would allow the Protector's office to carry out its awareness-raising and PR mandate more effectively, as well as carrying out independent research and launching more investigations of its own initiative, rather than solely reacting to complaints.

44. The Advisory Committee was informed that a rulebook drawn up by the Ministry of Human and Minority Rights in 2014 for aggregating data on discrimination cases across different ministries and state organs, including the police, is not being adhered to across the government. The aim of the rulebook was to standardise how data was collected and centralise it with the Protector, which could then provide a clearer picture of discrimination across the public sector. The fact that it has not been implemented is regrettable, since it makes the task of the Protector to collate data on discrimination even harder than it might be, and means that a comprehensive picture of discrimination across the government and thus, to an extent, the country, cannot be easily drawn and relies upon the efforts of the staff to work across government with data which may not consistently classify acts of discrimination in the same way.

45. No action has been taken, despite amendments to the Law on the Protector of Human Rights in 2014, to alter the method of appointment of the Protector to strengthen his/her independence.<sup>38</sup> This concern has been noted by the Advisory Committee in its previous Opinion, the Venice Commission and OSCE/ODIHR in their joint opinion in 2011, ECRI in its 2017 report, the Human Rights Commissioner of the Council of Europe in 2014, and the UN in 2015.<sup>39</sup> The Protector is still appointed and dismissed by a simple majority of parliament. The Advisory Committee regrets that the authorities have not responded to these concerns, which leaves the office of the Protector in a precarious political position.

46. The Advisory Committee notes that the Decision of the government to establish the Council for the Protection against Discrimination, established in 2011 and overseen by the Prime Minister, composed of senior ministers and non-governmental organisation representatives, was terminated in 2016.<sup>40</sup> The Advisory Committee previously noted in 2012 the important role the Council had to play as a coordinator within the state administration, and in the promotion of anti-discrimination through making public statements and initiating information campaigns. This was echoed by the European network of legal experts in its 2017 report on non-discrimination in Montenegro.<sup>41</sup> However, according to analysis by a human rights NGO in 2015,<sup>42</sup> NGOs taking part in the Council had not voted on a report of a meeting, indicating their dissatisfaction with the predominant role of the government. The same analysis also reported that the transparency of the work of the Council was poor. Nevertheless, the analysis did not call for the disbandment of the Council, but for it to reform to become more transparent, take into account the concerns of NGOs, and to ensure the implementation of its conclusions across the administration.

47. The Advisory Committee was informed by UNHCR of the situation of some 20 persons who might be at risk of statelessness because the Serbian law on travel documents has been applied restrictively. Serbs who had fled to Montenegro during the conflicts in the 1990s were not granted passports unless they had a Serbian ID card. Hence they were unable to obtain their Serbian passport,

<sup>38</sup> Law on the Protector of Human Rights and Freedoms, amendments of 2014; in particular articles 7, 8.

<sup>39</sup> See: Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE/ODIHR, (2011) para.25-26; ECRI 2<sup>nd</sup> report on Montenegro, June 2017, para.84-85; CommDH(2014)13, *op.cit.*, para.66-67; UN GA (2015, A/HRC/30/38/Add.2, paras.59, 86.

<sup>40</sup> Decision of 25 February 2016, noted in State report, p.46, 'decision on termination of the Council on establishment of the Council for Protection against Discrimination'.

<sup>41</sup> [European network of legal experts in gender equality and non-discrimination](#), Country Report Montenegro, 2017, p.74: 'it [the Council] contributed significantly to improving the legislation and monitoring the implementation of the anti-discrimination legal framework'.

<sup>42</sup> [Short Guide through legislative and institutional protection of human rights in Montenegro](#), Civic Initiative NGO and Centre for Civic Education, 2015, ps.50-52.

and were equally unable to access status of foreigner with permanent residence in Montenegro, since, to be granted permanent residency as a foreigner in Montenegro, a passport from the state of origin is needed. This group of persons must therefore register permanent residence in Serbia in order to apply for a Serbian ID card, to then obtain a Serbian passport to be able to claim a right to reside in Montenegro, which is not always possible for practical and legal reasons. For many affected persons it remained unclear how they will cross the border between Montenegro and Serbia with no identity document.<sup>43</sup>

#### *Recommendations*

48. The Advisory Committee urges the authorities to find a solution, including through diplomatic means, to provide a proper legal status to stateless persons to allow them to access their rights.

49. The Advisory Committee calls on the authorities to amend the Law on the Prohibition of Discrimination so as to address discrimination by association and the obligation to suppress public financing of organisations or political parties which promote racism.

50. The Advisory Committee calls on the authorities to ensure that the Protector of Human Rights, in its function as an equality body, has the power to adopt legally binding decisions and provide effective legal remedies to legal or natural persons who have been discriminated against.

51. The Advisory Committee calls on the authorities to provide the office of the Protector with the appropriate and necessary financial resources in order to reinforce the Protector of Human Rights' financial and political independence, and in order for it to effectively carry out its full mandate, including awareness-raising activities; to consider re-evaluating the procedure by which the Protector is appointed or dismissed to require a qualified majority; and to pursue the implementation of the rulebook on equality data collection and reporting it to the Protector of Human Rights effectively.

### **The situation of the Roma and Egyptians**

#### *Recommendations from the two previous cycles of monitoring*

52. The authorities were encouraged to increase their efforts in ensuring the effective implementation of the Strategy to Improve the Position of Roma and Egyptians and the Action Plan, particularly in close consultation with minority representatives. The Advisory Committee asked the authorities to redouble their efforts to close down the Konik camp through finding durable solutions, as well as to provide for adequate integration and return opportunities for the camp's inhabitants.

#### *Present situation*

53. The Advisory Committee welcomes the adoption of a Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016-2020, and accompanying annual Action Plans, which shows the good intentions of the authorities, and its willingness to work across government and with the NGO sector and Minority Councils. However, concerns have been raised about the participation and consultation of the Roma Minority Council in the drafting of the Strategy at consultation phase, and that where NGOs and the Roma Minority Council are listed as 'carriers' in the plan, it is up to those organisations to fund the given activity. In this regard, only actions already budgeted for by ministries have secure funding. The Advisory Committee has been informed by interlocutors that the budget provided is insufficient for the Strategy to meet its objectives.

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<sup>43</sup> Written submission of the UNHCR to the Secretariat of the Advisory Committee, 14/2/2019.

54. The Konik camp settlements were once the largest refugee camp in the Balkans,<sup>44</sup> and housed displaced persons from Kosovo\* in the aftermath of the war in 1999. Konik camp II closed in 2016 and Konik I officially closed in December 2018.<sup>45</sup> During a field visit to the settlement, the Advisory Committee was pleased to see that durable housing has been constructed on the site as part of the Regional Housing Programme within the framework of the Sarajevo Process, which foresaw the construction of 120 housing units in 2013, and with 51 more recently constructed. This is in addition to 94 residential units in Berane being constructed, and 62 in the pilot project in Nikšić.<sup>46</sup> These projects aim to house displaced persons who lived in 'deplorable'<sup>47</sup> conditions in informal camps, first in tents and then containers. The Advisory Committee welcomes the government's efforts to resolve the housing issue of displaced persons, and its cooperation with international organisations in this process; it echoes the concerns of some of its interlocutors, however, that, owing to the lack of public spaces for social interaction in Konik, and to avoid the continued separation of Roma and Egyptian communities, it will be necessary to develop local programmes for social integration.

55. The Advisory Committee regrets that there are still four families without durable housing in the Konik area. Interlocutors informed the Advisory Committee that one family could not apply because of its legal status, whilst three others could have applied but did not. They are not living in containers, but have moved in with relatives.<sup>48</sup> Furthermore, the Advisory Committee has been informed that there are issues with the provision of healthcare in Konik, since the medical centre on site was closed. Despite the efforts of the authorities, the social situation in the Konik area, in particular with regard to reproductive health and drug abuse, is a concern. Accurate data on users of health services is not available, which makes it difficult to monitor the extent to which health services are available to Roma and Egyptians.

56. Poor living conditions persist in clusters around the country, notably in Ulcinj/Ulqin. The Advisory Committee has either visited or been made aware of a number of Roma local communities comprising displaced persons living around Montenegro, particularly the Bijela Gora settlement in Ulcinj/Ulqin, where approximately four families, including around 26 children, are living in an abandoned and derelict factory without basic sanitation (see Article 15). According to the adults concerned, none of the children were attending school, despite a number of them having Montenegrin passports. The Advisory Committee is concerned about the living conditions of these children and adults alike, and that the children may not be receiving any formal education. The mayor of Ulcinj/Ulqin informed the Advisory Committee that he would follow this issue up personally. Other communities of displaced persons with housing issues are to be found in Herceg Novi, Tivat, Bijelo Polje, as well as Rožaje and Plav, according to Roma NGOs.

57. The Advisory Committee welcomes efforts by the authorities in Montenegro to facilitate refugees, particularly Roma from Kosovo\*, to return to their country of origin, and a number of programmes of cooperation with UNHCR, NGOs and the United Nations Mission in Kosovo (UNMIK) have enabled those who expressed an interest in returning to Kosovo\* to do so. The Advisory Committee is pleased to note progress on the regularisation of the status of the vast majority of refugees from Kosovo\*. According to UNHCR, there are 669 Kosovo\* refugees residing in Montenegro, whose applications for the status of foreigner with a permanent residence, and through that local integration, are still pending, whilst 7 448 persons successfully resolved their status to gain temporary

<sup>44</sup> See CoE Bank, 'RHP: 120 families from the Konik camp in Montenegro move into new homes', 15 November 2017, <https://coebank.org/en/news-and-publications/news/rhp-120-families-konik-camp-montenegro-move-new-homes/>.

<sup>45</sup> Regional Housing Programme, 'Konik Camp in Montenegro now officially closed – remaining 51 families move to new homes', 12 December 2018: <http://regionalhousingprogramme.org/konik-camp-in-montenegro-now-officially-closed-remaining-51-families-move-to-new-homes/>.

<sup>46</sup> State report, p.27.

<sup>47</sup> See ACFC Second Opinion on Montenegro, ACFC/OP/II(2013)002, Executive Summary.

<sup>48</sup> Written submission of the Red Cross Montenegro to the Secretariat of the Framework Convention, 4 February 2019.

or permanent residency rights in Montenegro. The Advisory Committee expects that the authorities will proceed without undue delay to regularise the status of the outstanding 669 persons, which would allow them better access to employment opportunities and housing.<sup>49</sup>

58. The Advisory Committee also takes note of the situation of Roma and Egyptian returnees in Montenegro, persons who left Montenegro to seek asylum, often in the European Union, but who have since been repatriated to Montenegro. A European Commission and World Bank study<sup>50</sup> assessed the ability of central and local institutions to deal with returnees, and found that they often returned to worse conditions than when they left, residing in informal settlements, having no access to identification documents, and, as the study notes, children who have spent a long time in the EU – often in an asylum centre, not necessarily integrated into society – may not speak the State language, and only speak Romani (in which there is no education in Montenegro – see Article 14) or Albanian. The authorities are reacting to this issue, with Operational Team for Readmission being established, and further coordination should be developed to assist returnees in their reintegration into Montenegrin society.

59. The risk of statelessness remains an issue among Roma and Egyptian communities, especially those who came from Kosovo\* as refugees. According to government figures from 2017, there were seven persons who had requested travel documents for stateless persons in Montenegro.<sup>51</sup> Subsequently, field verification led by UNHCR and the Government in November 2017, identified an estimated 145 persons at risk of statelessness. The Advisory Committee, however, notes the generally inclusive approach as regards rights granted to non-citizens, such as those provided for under the Framework Convention (see Article 3).

#### *Recommendations*

60. The Advisory Committee calls on the authorities to ensure effective access to services, specifically health care, education and housing, for persons belonging to Roma and Egyptian communities across the territory.

61. The Advisory Committee recommends that the authorities cooperate with Roma and Egyptian representatives and organisations and the Roma National Council on the drafting of the next Strategy for the Social Inclusion of Roma and Egyptians and its associated action plans to ensure that the goals and measures set are achievable, to provide such measures with the appropriate level of funding to ensure their implementation, and to provide adequate follow-up to guarantee that goals set are achieved.

62. The Advisory Committee urges the authorities to reassess their data on stateless persons on the territory, and provide a proper legal status to stateless persons to allow them to access their rights.

### **Article 5 of the Framework Convention**

#### **Preservation of culture of persons belonging to national minorities**

##### *Recommendations from the two previous cycles of monitoring*

63. The Advisory Committee urged the authorities to continue their support for cultural projects of national minorities, and to ensure that the mechanism for providing state support to cultural projects of

<sup>49</sup> Written submission of the UNHCR to secretariat of the Advisory Committee, 14/02/2019.

<sup>50</sup> 'Supporting the Effective Reintegration of Roma Returnees in the Western Balkans', European Commission and World Bank Group, 2018.

<sup>51</sup> State report, p.36.

national minorities was adequate, efficient and transparent, and that representatives of national minorities are involved in that mechanism.

*Present situation*

64. Support for minority cultures in Montenegro is generally characterised by a coherent legal framework and approach. The Law on Minority Rights (Section IIa, Article 36) established the Fund for the Protection and Exercise of Minority Rights (hereafter the Fund), whilst the Centre for the Preservation and Development of Minority Cultures – which plans its own programme of cultural projects<sup>52</sup> with a budget of around 300 000 EUR – was established in a separate decision.<sup>53</sup> Other project funding from the Ministry of Culture is also available,<sup>54</sup> including for projects promoting ‘multinational and multicultural values’.<sup>55</sup> National minorities may also have access to funds from the foreign ministries of interested states or their embassies in Montenegro.

65. The Fund was re-established in 2017, and has a fixed percentage of the government’s budget (0.15%) amounting to around 1 million Euros. The Fund, according to new rules on the Fund’s governance and running, makes a public call for applications twice a year. These applications are then assessed and decisions on funding are made by the project evaluation commission, made up of seven independent experts appointed by the parliament of Montenegro. The re-establishment of the Fund was designed to prevent conflicts of interest and make the work of the Fund more transparent through preventing national Minority Councils – representatives of whom also sit on the managing board of the Fund – from applying to the Fund. This change also means that national minorities not officially represented by a council are not put at a disadvantage. The Advisory Committee was also informed that the re-establishment should lead to an increase in the number of intercultural projects.

66. The Fund gave, in both funding cycles of 2017, 972 926 EUR to fund minority projects of all recognised national minorities in Montenegro. Each project was granted, on average, 5 000 EUR, and the division of funds between the minority groups broadly reflected the make-up of Montenegro itself. The Serb minority were granted the most funding<sup>56</sup>, the Muslim, Bosniak, Albanian and Croatian minorities receiving between 10% and 15% of the funding,<sup>57</sup> and the Roma minority received less than 10% in both cycles.<sup>58</sup> Examples of projects financed by the Fund in 2017 include ‘Story Festival – *Zavičajne staze* The Paths of Motherland’, Croatian language on an online platform, and ‘News Centre’ for Romani women. The Advisory Committee was informed that the policy of the Fund during 2017 was to distribute funding according to the size of the respective minority group, a policy which changed during the re-establishment of the Fund in 2018, when projects relating to the Bosniak minority received the most funding<sup>59</sup>. Intercultural projects received around 25% of the funding, a marked increase from 2017 when they received around 12%<sup>60</sup>. Projects relating to the Muslim and Albanian minorities received around 10% and 8% funding respectively and the Serb minority received the least.<sup>61</sup> Roma minority projects received around 9% of the available funding and the Croat minority 14%.<sup>62</sup>

67. However, in 2018, the Fund did not distribute any funding until December, and only one public call for applications was made. This was because, the Advisory Committee has been informed, the

<sup>52</sup> Full details of the Centre’s projects throughout the reporting period can be found on ps.54-60 of the State report.

<sup>53</sup> Official Gazette of the Republic of Montenegro, No. 38/01 and 27/07 and Official Gazette of Montenegro, Number 3/10.

<sup>54</sup> Law on Culture, Articles 68 to 96.

<sup>55</sup> *Ibid.*, Article 73 (3).

<sup>56</sup> Serbs: around one third or 275 000 EUR.

<sup>57</sup> Muslim, Albanian, Bosniak and Croat: approximately 100 000 to 150 000 EUR.

<sup>58</sup> Roma: less than 97 000 EUR.

<sup>59</sup> Bosniak: around 30% or 220 000 EUR.

<sup>60</sup> Intercultural projects 2018: 190 000 EUR approximately; 2017: 116 000 EUR approximately.

<sup>61</sup> Serbs: around 7% or 58 000 EUR.

<sup>62</sup> Roma: around 75 000 EUR; Croats: around 100 000 EUR.

seven-person Commission which decides on funding allocation had not been appointed by the parliament. During the years in which the Fund has been operational, Minority Councils and minority NGOs had come to rely on the project funding they got from the Fund, which meant that the delay in funding for 2018 was a grave problem. Some minorities, notably the Serb and Croat, could look to their neighbouring states for financial support, but this was clearly not an option for all, notably the Roma and the Egyptians. The Advisory Committee recalls that existing support for cultural activities of persons belonging to national minorities should be administered in a way which allows for the sustainability of minority institutions and of projects. The situation in 2018 highlighted the absence of sustainability in the financing of cultural projects from the Fund, and the Advisory Committee expects that future decisions on funding and amending the administration of funding will take into account the need for sustainability of minority cultural projects. The authorities should ensure that any future changes to the funding system and support mechanisms for minority cultures do not unduly interrupt minorities' access to funding in the medium to long term.

68. As of November 2018, five members of the Commission had been appointed,<sup>63</sup> and the Advisory Committee was informed that this would constitute a quorum and that decisions on the 2018 funding could be made. As to the criteria for being appointed to the Evaluation Commission, these are provided for in articles 36j – 36lj of the Law on Minority Rights, and initiated with a public call for applications; there are a number of provisions which are designed to prevent conflicts of interest – for instance, a member of the Commission cannot also be a member of a Minority Council. The Advisory Committee regrets the delay in distribution, but welcomes the fact that a solution was eventually found and money eventually distributed. In 2018, around 778,000 EUR was distributed by the Fund.<sup>64</sup>

69. Additionally, there appears to be little monitoring or evaluation work once money has been allocated by the Fund, to check the compliance of projects with what was requested, and see that the funding granted is being used effectively, especially when money is given to private individuals as opposed to NGOs or public bodies which must publish their accounts. Interlocutors indicated that more staff will be hired in the future in order to carry out this monitoring and evaluation work. This lack of evaluation work means that the funding process is perceived as lacking in transparency, since projects given funding are not assessed on how the money was spent.<sup>65</sup>

70. The Advisory Committee also notes that projects financed by the Fund should address an intercultural aspect of cultural preservation, i.e. should be used to emphasise what different communities have in common, rather than on differences between them. Without having analysed the impact of every project the Fund financed in 2018, there appears to have been an increase in the number of projects promoting intercultural dialogue, which is a welcome development. However,

<sup>63</sup> 'Održana 50. sjednica Administrativnog odbora', '50<sup>th</sup> Session of the Administrative Board', 8 November 2018, appointment of 5 members of the evaluation commission, Parliament of Montenegro: <http://www.skupstina.me/index.php/me/radna-tijela/administrativni-odbor/item/2543-odrzana-50-sjednica-administrativnog-odbora>.

<sup>64</sup> See letter from chairman of the management board of 3/12/2018 launching the public call for applications (in Montenegrin): <http://www.fzm.me/v/images/pdf/kokurs%20za%20raspodjelu%202018.pdf>.

List of projects which applied for financing from the Fund in December 2018 (in Montenegrin):

<http://www.fzm.me/v/images/pdf/Lista%20pristiglih%20projekata%20za%202018.doc>;

List of projects financed by the Fund in December 2018 (in Montenegrin): <http://www.fzm.me/v/images/pdf/odluka-2018.pdf>.

<sup>65</sup> The State Audit Office raised concerns about the reporting and evaluation of projects dating back to 2010, recommending that the Fund monitor the implementation of the projects financed, which is still not the case: <http://www.dri.co.me/1/eng/Excerpt%20from%20the%20Audit%20Report%20on%20Annual%20Financial%20Statements%20and%20Audit%20of%20Efficiency%20of%20the%20Fund%20for%20Minorities%20for%202010.pdf>.

owing to the lack of information and evaluation of projects given funding available to the public, it is difficult to be certain that the intercultural dialogue criteria are fulfilled.<sup>66</sup>

71. As mentioned above, Minority Councils may no longer apply for funding from the Fund. Minority Councils themselves expressed the view that their lack of clarity over their precise role had meant that they had, to some extent, come to rely on the funding provided by the Fund, and that, even whilst their regular baseline funding had been doubled, it may not make up for the loss in project funding they would experience.

72. The Advisory Committee notes the publication of the first Romani-Montenegrin / Montenegrin-Romani dictionary in 2015, with funding from the Ministry of Human and Minority Rights. Around 12 000 words were included and 500 copies were published. The lack of authoritative sources on the Romani language meant that the authorities had to rely upon an expert from Zagreb. Despite their involvement in the planning of the dictionary, the Roma community was not satisfied with the end result as it does not fully reflect Montenegrin variants of Romani. The Advisory Committee notes that a competition for best research article on social integration of Roma in Montenegro has been set up to strengthen public awareness and encourage research reporting into issues faced by Roma, and that the World Day of Romani Language has been marked every year since 2014.

73. Representatives of the Croat community informed the Advisory Committee of an issue in the Boka Bay area around Kotor and Tivat, regarding recognition the 'Boka Navy' – a centuries old naval fraternity – under UNESCO's Intangible Cultural Heritage list.<sup>67</sup> According to interlocutors, Montenegro chose to pursue a single-country application, rather than formally submitting with Croatia a joint application – though there were bilateral talks on this issue – and the initial drafts of the application to UNESCO omitted certain details about the importance of the Catholic heritage of the Boka Navy and of St Tryphon. Consultations with Croat NGOs were held during the application process. The Advisory Committee welcomes the inclusion of the Boka Navy on the Intangible Cultural Heritage list, but takes note of the view of the Croat National Council that they had not been adequately consulted by the Ministry of Culture during the on-going application process in 2017 regarding a joint submission.<sup>68</sup>

74. The rules governing the display of national symbols, for example flags, are governed by two pieces of legislation – the Public Order and Peace Act (1994) (Article 23) and the Law on State Symbols (2004). The Public Order and Peace Act prohibits the displaying of the symbols or flags of other States in a public place<sup>69</sup> without authorisation, which are of the minorities of Montenegro also, whilst the other law does not. This has led to some tension, for example the Advisory Committee was informed that in Ulcinj/Ulqin in November 2018, two police officers stopped a car flying the Albanian flag on Flag Day. The Advisory Committee was informed that this is not in contravention to the Law on State Symbols,

<sup>66</sup> See Shadow report Montenegro from NGO *Mladi Romi*, which outlines concerns about both the transparency of the Fund and the historical lack of intercultural funding: <http://mladiromi.me/eng/2014-07-21-09-36-07/documents/category/3-publikacije?download=62:shadow-report-montenegro-ngo-young-roma-2016>, ps.17-18.

<sup>67</sup> For application documentation see: [https://ich.unesco.org/en/files-2019-under-process-00989?select\\_country=00242&select\\_type=all#table\\_cand](https://ich.unesco.org/en/files-2019-under-process-00989?select_country=00242&select_type=all#table_cand).

<sup>68</sup> Written submission of Croat National Council to the Secretariat of the Framework Convention, 4<sup>th</sup> February 2019: 'Our concerns over this matter have been deepened by the fact that the Montenegrin Minister of Culture has not yet until this day agreed on an official meeting with the President of the Croatian National Council of Montenegro or responded to the official demand letter for official receipt sent by the President of the Croatian National Council of Montenegro, in which it was stated that the Boka Navy would be the topic of the meeting. The letter was originally sent on the April 23<sup>rd</sup> 2017 and then resent twice, in July and in November of the same year.'

<sup>69</sup> Defined by Article 3 of the Law: 'A public place, in the sense of this law, is a place where everyone has free access (street, square, public road, pier, beach, park, waiting room, workspace, catering or similar facility) or access is allowed under subordinate conditions (sports facility, cinema or theater hall, means of public transport, exhibition rooms, etc.), as well as a second place when used for public gatherings, sports or other events. A public place, in the sense of this law, shall be considered any other place where a misdemeanor has been committed, the consequence of which has occurred in a public place.'

but is to the Law on Public Order. The authorities have indicated that this matter should be clarified in the forthcoming Law on National Symbols, which is awaiting approval by parliament.

#### *Recommendations*

75. The Advisory Committee reiterates its call on the authorities to ensure, with regard to the Fund for the Protection and Realisation of Minority Rights, that national minority representatives and organisations are able to consult with the competent authorities regarding the application for funding. More information on the distribution of funding should be available to the public, and the process should be more transparent, with project reports and evaluations available to the public.

76. The Advisory Committee encourages the authorities to continue to support intercultural projects, both financed by the Fund and from other organs of the administration responsible for the distribution of funding to projects designed for national minority communities.

77. The Advisory Committee recommends that the authorities clarify the situation regarding the display of symbols of national minorities in the forthcoming legislation.

### **Article 6 of the Framework Convention**

#### **Tolerance and Intercultural Dialogue**

##### *Recommendations from the two previous cycles of monitoring*

78. The Advisory Committee was pleased to note the general climate of tolerance which prevailed in Montenegro, and invited the authorities to continue their efforts to promote intercultural dialogue, mutual understanding and respect whilst combating prejudice shown towards people belonging to national minorities and displaced persons living on the territory. The authorities were encouraged to continue their efforts in the media and education to inform the public about the history and culture of national minorities.

##### *Present situation*

79. The infliction of hatred, 'or intolerance on any grounds', is prohibited in the constitution (Article 7), and in its preamble, Montenegro's citizens are defined as committed to, *inter alia*, 'tolerance, respect for human rights and liberties, multiculturalism'. The authorities are moving towards a general policy of interculturalism, with the authorities increasing the funding provided for intercultural projects from the Fund as noted in Article 5 (above). In this regard, the authorities also conduct research to assess the situation in terms of intercultural dialogue, and in a survey of final year students carried out in 2018 on how religion is viewed by the student population found that 47% of respondents would not marry someone of a different faith to their own. Moreover, 48% of respondents said that religious institutions and religions do not affect at all the multiculturalism in Montenegro (52% replied that they affect multiculturalism 'to a great extent').<sup>70</sup> The Advisory Committee notes the small sample size of this survey and welcomes such efforts to assess the situation on the ground.

80. A survey published in 2017 in the framework of the Council of Europe programme 'Support to the National Institutions in Preventing Discrimination in Montenegro' (PREDIM) showed<sup>71</sup> that around

<sup>70</sup> Report 'o rezultatima istraživanja (Ankete) studentske populacije na temu: „Da li je religijsko obrazovanje važno za formiranje moralnih vrijednosti i etičkih stavova', published 12/9/18 by Ministry of Human and Minority Rights (in Montenegrin).

<sup>71</sup> Discrimination Patterns in Montenegro, Prof. Miloš Bešić, available at: <https://rm.coe.int/final-report-human-rights-survey-discrimination-patterns-in-montenegro/1680717626>. The sample size of the survey in Montenegro was 1 038 persons, and included persons belonging to national minorities, different religions and a range of ages, levels of

30% of those surveyed would not want a person belonging to the Roma minority as a neighbour – which is higher than the rest of former Yugoslavia, but less than Western Europe and significantly less than ‘post-communist Europe’,<sup>72</sup> whilst being an increase on 2010 figures.<sup>73</sup> The Advisory Committee is concerned at this increasing level of anti-Gypsyism, and notes that levels of racism are also increasing against other communities. For instance, despite Montenegro’s numerically small Jewish population (estimated to be around 350-400 persons, or around 0.07% of the population), 21.9% of respondents replied that they would not want a Jewish person as a neighbour, which is higher than the former Yugoslavia, ‘post-communist Europe’ and Western Europe’s rates,<sup>74</sup> and again is an increase on 2010.<sup>75</sup> The Advisory Committee is concerned at these findings, which seem to be indicative of growing divisions within society along ethnic and religious lines.<sup>76</sup> The results of the survey should encourage the authorities to remain vigilant on the signs of growing intolerance, and to continue to monitor the situation closely.

81. The Advisory Committee welcomes the findings of another part of this same survey, which asked about levels of support for the ‘fight against discrimination for different groups’. According to the findings, three quarters of those surveyed support the fight of national minorities against discrimination<sup>77</sup> – an increase of 10% in seven years – whilst 72% support the fight of Roma against discrimination.

82. According to interlocutors of the Advisory Committee, Roma and Egyptian women face high rates of domestic violence, which has not been addressed properly by the authorities. Additionally, as the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) noted in 2018,<sup>78</sup> Roma and Egyptian women face difficulties in reporting the violence they experience, resulting in inadequate responses from the authorities; additionally, there is a lack of specialised services (counselling, shelters etc.) for victims of forced marriage, and there is a need to reinforce cooperation with NGOs. Interlocutors of the Advisory Committee and GREVIO note that there is a tendency in the authorities to see forms of gender-based violence such as forced marriage as a cultural practice or a custom specific to their group which does not necessitate the response of the state authorities. The Advisory Committee notes the gender focus of the Strategy for Social Inclusion of Roma and Egyptians 2016-2020, and other steps aimed at raising awareness of violence experienced by Roma and Egyptian women, including conducting campaigns in twelve Roma and Egyptian settlements to raise awareness of child marriage and violence against women, and expects the authorities, in line with GREVIO’s findings and recommendations, to continue to address this issue.<sup>79</sup>

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education and incomes. Comparisons to ‘Western Europe’, ‘post-Communist Europe’ and ‘ex-Yugoslavia’ come from the study as published.

<sup>72</sup> For Western Europe, the figure was 34.7%, for ‘post-communist Europe’ the figure was 45.4%; for ex-Yugoslavia it was 23.3%.

<sup>73</sup> In 2010, 19.5% of those surveyed responded that they would not want a person belonging to the Roma community for a neighbour.

<sup>74</sup> For Western Europe, the figure was 13.2%; for ‘post-communist Europe’ the figure was 18.7%; for ex-Yugoslavia it was 17.1%.

<sup>75</sup> In 2010, 14.6% of those surveyed responded that they would not want a person belonging to the Jewish community as a neighbour.

<sup>76</sup> Other data from the survey suggests that, based on 2010, an increased proportion of Montenegrin persons would not want a ‘person of another race’ for a neighbour: 12.4% in 2010 and 16.7% in 2017. Further, the data shows an increase in around 9% from 2010 to 2017 of the number of persons who would not want a ‘settler/immigrant’ for a neighbour: 10.7% in 2010 and 19.4% in 2017. This is higher than Western Europe (15.3%) and similar to other countries in the former Yugoslavia (19.8%).

<sup>77</sup> The data shows that 76.7% of those surveyed in 2017 supported the fight against discrimination for national minorities, whilst in 2010 the figure was 66.3%.

<sup>78</sup> See [GREVIO first \(baseline\) evaluation report](#) on Montenegro, para.18.

<sup>79</sup> See GREVIO first (baseline) evaluation report on Montenegro, para.75 and recommendation para.76.

83. Roma and Egyptian communities are also subject to stereotyping in the media, as an on-going study by a Roma and Egyptian NGO shows.<sup>80</sup> They show in very precise numbers the number of positive, neutral and negative stories which appeared in the press about Roma and Egyptian communities. For the first quarter of 2018, for example, the number of stereotypical reports, which could increase prejudice against Roma and Egyptian populations, increased by six to 37. This number increased to 47 in the second quarter, but decreased to 13 in the third – reflecting an overall greater number of stories in the second quarter, and a smaller number in the third. The vast majority of all stories are, however, either positive or neutral in their outlook on Roma and Egyptian communities.

84. As mentioned above, inflicting hatred is prohibited in the constitution (Article 7). Article 34a of the amended (in 2017) Law on the Prohibition of Discrimination sanctions hate speech with a financial penalty. The Advisory Committee was, however, informed of a number of isolated incidents of hate speech occurring in the press, often targeting the Albanian community. Such instances increased around elections and international sporting events. The Advisory Committee was told of one example in 2014 in which a newspaper, following a football match between Albania and Serbia, referred to Albanians as ‘shiptari’, a highly derogatory term for Albanians.<sup>81</sup> The editor of the newspaper was found guilty of inciting ethnic hatred and, having initially been imprisoned, was fined 3 000 EUR in 2017.<sup>82</sup> The Advisory Committee was also informed that incidents of hate speech against other minority communities occur too, which it regrets.

85. Incidents of hate speech online are not closely monitored at the moment, particularly on social media. There is no national agency with the mandate to monitor social media, or indeed comments on news websites. As per the Electronic Media Law, the Agency for Electronic Media has the function of keeping the register of providers of ‘electronic publications’, but it has no authority to monitor their content or issue sanctions where standards are breached, including hate speech. It was reported to the Advisory Committee in exchanges with representatives of national minorities that hate speech on social media is commonplace. Without oversight of social media, the Advisory Committee is concerned that instances of hate speech may go unpunished. There is a draft Media Law, currently at the consultation stage, which the Advisory Committee expects should address these issues.

#### *Recommendations*

86. The Advisory Committee calls on the authorities to pay special attention to the prevention of hate speech in the consultations on the new Media Law, and to ensure that the law addresses the problem of online hate speech, clearly defines responsibilities for hate speech published, and mandates a state agency as regulator to monitor and sanction instances of hate speech online.

87. The authorities should maintain their positive approach to data gathering on levels of tolerance in society, and remain alert to divisions indicated by such data.

88. The Advisory Committee urges the authorities to take effective measures to tackle multiple discrimination, domestic violence and forced marriage within Roma and Egyptian communities, particularly through ensuring that current and future strategies and associated action plans are implemented in close cooperation with members of the communities concerned, contain measures which have adequate funding and support, and which are followed up on to ensure effective implementation.

<sup>80</sup> ‘Media Analysis for the Roma and Egyptian Population Coverage’, NGO Mladi Romi, covering Q1, Q2 and Q3 of 2018.

<sup>81</sup> Balkan Insight, ‘Montenegrin Albanians Sue ‘Informer’ for Hate Speech’, 7 November 2014, available at: <http://www.balkaninsight.com/en/article/montenegrin-albanians-to-sue-serbian-tabloid-over-hate-speech>.

<sup>82</sup> CDM, ‘Bivši urednik “Informera” platio 3.000 eura i izašao iz zatvora’, 29 March 2017, available at: <https://www.cdm.me/hronika/bivsi-urednik-informera-platio-kaznu-i-izasao-iz-zatvora/>.

## **Policing and law enforcement**

### *Recommendations from the two previous cycles of monitoring*

89. In previous cycles, the Advisory Committee recommended that the authorities should raise awareness of human and minority rights in the police force, and should strengthen supervisory mechanisms monitoring police behaviour to be more in line with European standards.

### *Present situation*

90. Interlocutors of the Advisory Committee did not report that national minorities were targeted by the police. The Advisory Committee welcomes awareness-raising measures carried out during the reporting period, including a memorandum of understanding signed between the Police Academy Danilovgrad and the Ministry of Human and Minority Rights which aims to develop minority rights and freedoms in the context of police training, improvement of the situation of minorities through the principles of partnership, transparency and accountability, with a special focus on the recruitment of candidates with national minority backgrounds.

91. The Advisory Committee was informed by the authorities that the police complaints mechanism – the Council for the Civil Control of Police Work – worked on around 300 cases (either citizens' complaints or investigations of its own; the number of cases concerning persons belonging to national minorities cannot be established by the Advisory Committee) between 2015 and mid-2018.<sup>83</sup>

### *Recommendation*

92. The authorities should continue their efforts to raise awareness of respect for diversity and human rights within the police force and to ensure that the Council for the Civil Control of Police Work has the capacities to adequately monitor police conduct, including cases concerning persons belonging to national minorities, and to collect disaggregated data concerning such cases.

## **Article 8 of the Framework Convention**

### **Right to manifest one's religion and establish institutions, organisations and associations**

### *Recommendations from the two previous cycles of monitoring*

93. The Advisory Committee found that relations between the authorities and religious groups improved from the first cycle to the second, but that no progress had been made on the restitution of property to religious communities. The authorities were invited to proceed with the restitution of religious property to religious communities.

### *Present situation*

94. Article 46 of the constitution guarantees freedom of thought, conscience and religion, as well as the right to manifest religious belief through prayer, preaching, customs or rites. Article 79 of the constitution further grants to persons belonging to national minorities the 'right to exercise, protect, develop and publicly express' religious particularities. The 2004 (amended twice, 2010 and 2017) Law on the Restitution of Property (Article 8), regulates the general conditions for the restitution of religious property seized during the Yugoslav period. The Law on Religious Communities, currently in force, regulating the legal status of religious groups dates from 1977. There is a planned 'Law on Religious Freedom', which has been in draft form since 2015, and should update and regulate the issues

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<sup>83</sup> Council for the Civil Control of Police Work, 2018 report, see ps.13-14, available (in Montenegrin) at: <http://www.kontrolapolicije.me/sites/default/files/library/files/GRA%C4%90ANSKI%20NADZOR%20I%20JA%C4%8CANJE%20INTEGRITETA%20CRNOGORSKE%20POLICIJE.pdf>.

surrounding the ownership of property and financial situation of religious groups, as well as formalising the registration of a religious community. Some religious and national minority groups were consulted on the drafting of this Law, the Advisory Committee was informed, but not all those concerned. The Advisory Committee has been informed that following the adoption of this Law, a new law on the restitution of property will be drafted and adopted.

95. In 2014, on the basis of the memoranda of understanding or fundamental agreements signed between the government and religious communities, including the Holy See and representatives of the Islamic and Jewish communities, several 'joint commissions' were set up to implement these agreements. This included giving the Islamic community its desired radio frequency, and highlighting the good cooperation between the religious communities and the government.

96. Amongst other factors, the incomplete process of restitution of property is negatively affecting inter-religious relations, leading to discord between some religious communities. One notable example was in Svac, where the Serbian Orthodox Church attempted to hold a service on the site of the ruins of a medieval church owned by the State of Montenegro, according to the municipality of Ulcinj/Ulqin – although the Serbian Orthodox Church claims that it in fact owns the site, but local Albanian-minority protestors prevented Metropolitan Amfilohije and worshippers from holding the service. The Mayor of Ulcinj/Ulqin reported that the site had been closed since 2015 for preservation work.<sup>84</sup> There are additional cases<sup>85</sup> where members of the Montenegrin Orthodox Church and the Serbian Orthodox Church attempted to hold liturgies and religious activities on the same sites in Cetinje and Podgorica, to which both churches lay claim, on 1 and 8 October 2017, with the police intervening and in both cases the Montenegrin Orthodox Church holding its liturgy outside the premises and the Serbian Orthodox Church inside. Information provided by different interlocutors is conflicting, and the Advisory Committee is not in a position to establish the facts in these cases. It is expected, however, that issues between religious communities will be clarified and rectified in the forthcoming legislation on the freedom of religion as this law will provide for a more specific process for the restitution of religious property.

The Advisory Committee expects the authorities, whilst respecting the relevant provisions of the Framework Convention in the drafting of the Law on Freedom of Religion, to continue to consult with members of religious communities, with a view to fostering inter-religious understanding.

#### *Recommendation*

97. The Advisory Committee calls on the authorities to adopt the new law on religious freedom without undue delay, and to subsequently proceed with the restitution of religious property.

### **Article 9 of the Framework Convention**

#### **Minority languages and participation of minorities in the media**

#### *Recommendations from the two previous cycles of monitoring*

98. In previous monitoring cycles, the authorities were encouraged to continue with their support for radio and television broadcasting in minority languages, to increase efforts to ensure access of persons belonging to minorities to the radio and television programmes produced for them, and to ensure the interests of minorities are mainstreamed into regular programming. The authorities were

<sup>84</sup> Balkan Insight 'Orthodox Church Incident Sparks Ethnic Tensions in Montenegro', 10 Jul 2018, available at: <http://www.balkaninsight.com/en/article/stopped-serbian-church-service-sparks-row-in-montenegro-07-10-2018>.

<sup>85</sup> [US State Department International Religious Freedom Report](#), 2017.

also asked to confirm their commitment to pluralism through the active recruitment of journalists belonging to national minorities.

*Present situation*

99. Overall the media picture in Montenegro is characterised by a broad range of networks and stations, with a wide offering of programming, and with good coverage across the country for both television and radio, at both local and national levels. The Electronic Media Law<sup>86</sup>, most recently amended in 2016, contains wide-ranging special provisions for minority-language programming and programmes which address the interests of minority communities. Article 55 provides that the language of programming is Montenegrin, or an official language, but that an exception is to be made for programming aimed at minority communities. Article 74 provides that programming intended for ‘different groups in society’, which includes ‘members of minority nations and other minority national communities’, is officially in the public interest, and broadcasters are obliged to produce such programming. In Article 76, the funding for programmes which aim to preserve the ‘cultural and ethnic identity’ of minority communities is to be distributed from the budget of Montenegro or of the local self-government unit, specifically for Romani and Albanian-language programming (Art.76 (3)). Article 136 deals with funding for commercial media, where specific funds are made available to programmes which are ‘particularly significant for members of minority nations [... and the] promotion, prevention and combating [of] all forms of discrimination.’ Other criteria include raising awareness of gender equality and the culture of public dialogue.

100. The Advisory Committee notes that public television and radio continue to broadcast programmes addressed to persons belonging to minorities. The majority of programmes in minority languages are in Albanian, with some also produced in Romani. In terms of Albanian-language television output on the national broadcaster TVCG, there is a daily 10-minute informative programme called ‘Lajmet,’ and a weekly ‘mosaic style’ programme covering a range of issues and topics which airs for 45 minutes called ‘Mozaiku’. There is additionally a fortnightly broadcast in the Romani language on TVCG called ‘Savore’, and a weekly broadcast called ‘Bridges’, a programme dedicated to the history and culture of all minorities on Montenegro. In public radio output, the news is aired in Albanian six times a week in the mornings for 5-10 minutes, and a news show called ‘Dnevnik’ is broadcast every weekday in Albanian. There is in addition a weekly show called ‘At the end of the week’, which has had its run-time extended to 55 minutes recently, and concerns music, tradition, education, agriculture and other topics of interest to Albanian communities. There are extensive local public radio stations for the minorities residing in their respective areas of coverage.<sup>87</sup>

101. Whilst the fact that programmes on public television are broadcast in the Albanian language is to be welcomed, they are at present not subtitled in Montenegrin, which, according to some interlocutors of the Advisory Committee, creates a sense of distance among the minority communities of Montenegro. The OSCE HCNM Tallinn Guidelines on digital media recommend that ‘States may require public service media [...] to make reasonable arrangements for the translation of media content in the State/official language(s) into the languages of national minorities, and vice-versa, in order to enhance the linguistic accessibility of both types of content throughout society and thereby help to foster intercultural dialogue.’<sup>88</sup> In light of this, the Advisory Committee expects the authorities to make appropriate provisions for such translation, including subtitling, without unduly financially burdening minority media.<sup>89</sup> The Advisory Committee also considers that the authorities may

<sup>86</sup> Electronic Media Law, see: <http://aemcg.org/wp-content/uploads/2011/11/Electronic-Media-Law-17.08.2016.pdf>.

<sup>87</sup> See State report, ps. 82-83.

<sup>88</sup> OSCE High Commissioner on National Minorities, [The Tallinn Guidelines on National Minorities and the Media in the Digital Age](#), Guideline 15, February 2019.

<sup>89</sup> The Tallinn Guidelines set this requirement also, as does the Advisory Committee in [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.44 and 50.

encourage more bi- or multilingual formats in broadcasting, in order to reflect cultural and linguistic diversity.<sup>90</sup>

102. There is extensive commercial radio and television in the Albanian language, although some of these media told the Advisory Committee of their dissatisfaction at only receiving project-based funding from the Fund, when Article 136 of the Electronic Media Law provides for funding to commercial broadcasters for programmes significant to persons belonging to national minorities. The authorities, however, responded that, in their position as private media, run for profit, they should ensure their own funding sustainability. The Advisory Committee recalls that it values 'the significant role played by private and community media for the realisation of linguistic rights of persons belonging to national minorities, and has welcomed the contribution made by the private sector media in the areas of integration and the general appreciation of cultural diversity in society.'<sup>91</sup>

103. The Advisory Committee notes that one weekly Albanian-language newspaper *Koha Javore* receives its annual 100 000 EUR funding directly from the parliament.<sup>92</sup> Print media in other minority languages is funded by the Fund, for example *Hrvatski Glasnik* and *Alav*, a monthly Croatian journal and a Romani-language annual. The Advisory Committee is concerned that their funding could reflect the unpredictability of project-based funding, and that the publishers of *Hrvatski Glasnik* had to apply to the Croatian embassy for funds in 2018 when the Fund did not distribute financing. The Advisory Committee calls the attention of the authorities to the Tallinn Guidelines, which recommend that 'States should introduce legislation and/or amend existing legislation to guarantee the [...] sustainability of public service media [...].'<sup>93</sup> In that regard, and in view of the public service functions of these media, the Advisory Committee considers it essential to safeguard sustainable minority-language media, whether it is digital, print or broadcast.

104. Roma Radio is a public radio station founded in 2011, and broadcasts news bilingually (in Romani and Montenegrin) when possible. However, the output of Roma Radio relies on the work of a single Roma journalist, who also covers the RTCG networks, meaning that output in Romani is subject to the availability of this single journalist. According to the job scheme, there should be a second journalist, but the Advisory Committee was informed that nobody meeting the requirements had put themselves forward.

105. Regarding self-regulation and media standards, the right to reply and/or correction in the media is regulated in articles 26-35 of the Law on Media. The regulation of the media in terms of upholding journalistic standards and ethics is spread across different bodies. The newspapers Dan and Vijesti and Monitor have their own complaints mechanisms. Additionally, there has been a Media Council for Self-Regulation, a voluntary body comprising mainly electronic media outlets, and the Self-regulatory Council for Local Press, which deals with local news media. Both of these organisations have effectively ceased to function. According to interlocutors of the Advisory Committee, there appear to have been differences along political lines within the press which have impeded a consensus being reached. Whilst efforts by NGOs and Minority Councils (sometimes funded through the Fund (see Article 5)) have been welcome, an overall regulatory body which could adequately and even-handedly manage and rule on complaints relating to the media appears to be lacking. The Advisory Committee considers it necessary that the forthcoming Law on Media, foreseen in 2019, will include some aspects on self-regulation and ensure that standards are upheld.

### *Recommendations*

<sup>90</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.41.

<sup>91</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.45.

<sup>92</sup> Decision of 27 December 2014. For more details, see state report, p.79.

<sup>93</sup> OSCE High Commissioner on National Minorities, [The Tallinn Guidelines on National Minorities and the Media in the Digital Age](#), Guideline 19, February 2019.

106. The Advisory Committee recommends that the authorities consider funding methods which could provide longer term sustainability for programmes and radio or television stations, as well as the print media, addressing persons belonging to all national minorities.

107. The Advisory Committee reiterates its recommendation to actively recruit, employ and train journalists belonging to national minorities, particularly the Roma and Egyptian communities.

## Article 10 of the Framework Convention

### Use of minority languages in public and with administrative authorities

#### *Recommendations from the two previous cycles of monitoring*

108. In previous cycles of monitoring, the Advisory Committee called for greater clarity on the implementation on rights of persons belonging to national minorities to use their languages in communication with the authorities, and that such rights were consistently applied across the territory.

#### *Present situation*

109. It is recalled that based on Article 13 of the constitution, Montenegrin is the state language whilst the Serbian, Bosnian, Croatian and Albanian languages are 'in official use'; Cyrillic and Latin scripts are also assigned equal value. On a local level, the Statutes and Rules of Procedure of the municipalities Podgorica, Tuzi, Ulcinj/Ulqin and Plav, where persons belonging to national minorities constitute the majority of the local population – with the exception of Podgorica – define the use of languages and alphabets.<sup>94</sup> In Podgorica City Assembly, a delegate who is a member of a minority has the right to use their minority language in addition to the official language, and the administration of the capital city, according to the Statute, shall be obliged to make provision for a member of a minority to use their language and alphabet in administrative proceedings, issuance of public documents and keeping of official records; in Tuzi the Albanian language is in official use, and each party or interested person can submit a document to the administration in Albanian, and be provided with answers in that language, as well as issuing public documents and keeping official records in Albanian. These same provisions are in place in Ulcinj/Ulqin Municipality, whilst in Plav, according to its Municipal Statute, Bosnian, Albanian and Serbian (including Cyrillic script) are in official use, and the same rights to communicate with administrative authorities outlined above apply.

110. In line with the Framework Convention, and following recommendations of the Committee of Experts of the European Charter for Regional or Minority Languages<sup>95</sup>, and using the census results of 2011, the Law on Minority Rights was amended in 2017. Article 11 now sets out that where persons belonging to national minorities make up 'the majority or at least 5%' of the population, the particular minority language is in official use.<sup>96</sup> Previously, the law indicated 'a significant part' instead of 5%.<sup>97</sup> The Advisory Committee has been informed that should the next census show the number of concerned

<sup>94</sup> See State report, ps.84 and 87.

<sup>95</sup> See First and Second reports of the Committee of Experts of the Language Charter on Montenegro, First: ([ECRML\(2010\)4](#)), paras. 27-30; Second: ([ECRML\(2012\)4](#)) paras. 29-31.

<sup>96</sup> See Law on Minority Rights and Freedoms, Article 11: 'Minority nations and other minority national communities and their members shall have the right to use their own language and alphabet.

In the local self-government units, in which members of minority nations and other minority national communities constitute a majority or at least 5% of the population, according to the results of the last two consecutive censuses, also the language of that minority nation and other minority national community shall be in official use.

The official use of the language of minority nations and other minority national communities, for the purpose of paragraph 2 of this Article, shall particularly imply the following: use of the language in administrative and court proceedings and in conducting administrative and court proceedings, at issuance of public documents and keeping official records, on ballot papers and other electoral material as well as in the work of representative bodies.' [Most recently amended version of Law.](#)

<sup>97</sup> See [Law on Amendments to the Law on Minority Rights and Freedoms](#), Article 4.

dropping below 5% in a local government unit where persons belonging to the national minorities currently have their language in official use, for example in Bar/Tivar – where a member of the city assembly can address it in his/her first language and communication with the authorities in Albanian is possible – and which had an Albanian population making up slightly above 5% of the total in 2011, the minority language in official use will remain so. The Advisory Committee broadly welcomes these amendments as they have contributed to clarifying the situation for the implementation of language rights, and to ensuring the continuity of minority language provision in communication with the authorities. However, in Rožaje municipality, which had in 2011 an Albanian population slightly larger than that of Bar/Tivar, there are no bilingual forms from the local administration, and decisions of the local assembly are not available in Albanian. The Advisory Committee expects that any disparities between laws, including the constitution, will be eliminated in the coming period (see Article 11, ‘Topographical indications’).

111. The Advisory Committee wishes to point out that the ‘substantial numbers’ criteria is one of two criteria for communicating with the authorities in a minority language in Article 10 of the Framework Convention, the other being the criterion that minorities should traditionally inhabit the area. The Advisory Committee recalls that States should ‘carefully study demand and assess existing needs in the geographical areas where there is substantial or traditional settlement of persons belonging to minorities, taking into account the specific local situation.’<sup>98</sup> The Advisory Committee expects that the authorities will study both criteria to ensure coherent policy across the territory.

#### *Recommendation*

112. The Advisory Committee recommends that the authorities continue to ensure that the relevant legal provisions relating to the use of minority languages in communication with and by public authorities are guaranteed in practice in all relevant areas.

### **Article 11 of the Framework Convention**

#### **Personal names in minority languages**

#### *Recommendations from the two previous cycles of monitoring*

113. The Advisory Committee previously recommended that the authorities make adequate provision for the changing of personal names in official documents, notably by extending the deadline to do so beyond 2013.

#### *Present situation*

114. The deadline associated with the Law on Personal Names (Article 22), which allowed the rectification of mistakes between 2008 (when the Law came into force) and 2013 free of charge, was not extended. However, it is still possible to change the name entered into official documents for a small administrative fee through the same process as ordinarily changing a personal name.

115. The Committee of Experts of the European Charter for Regional or Minority Languages considered that family names could be used and adopted in Romani language, having heard no complaint to the contrary.<sup>99</sup> The Advisory Committee did not hear evidence to the contrary during its visit. It is also possible in all other languages including Albanian, and 2 101 persons chose to have their details entered in Albanian on their personal identification card.<sup>100</sup> Equally, it is possible to request

<sup>98</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.56.

<sup>99</sup> [Fourth Report of the Committee of Experts of the European Charter for Regional or Minority Languages on Montenegro](#), 2017, see Article 10.5 and para.31.

<sup>100</sup> State report, p.92.

passports in any of the languages in official use, and in either Cyrillic or Latin script. For foreigners wishing to register, there is a special provision permitting the entering of their name in their language in the Latin script.

### Topographical indications

#### *Recommendations from the two previous cycles of monitoring*

116. In both previous cycles of monitoring, the Advisory Committee called on the authorities to ascertain whether there was a demand by persons belonging to national minorities for topographical indications in minority languages and to take measures to ensure this right was implemented more extensively, beyond the municipalities where national minorities make up a majority of the local population.

#### *Present situation*

117. The Law on Minority Rights and Freedoms (Article 11) now applies the provision on signage and topographical indications to municipalities with 5% minority population according to the previous two consecutive censuses.<sup>101</sup> However, the Law on Local Self Government<sup>102</sup> still maintains the wording 'where minority national communities form a majority or significant part of the population' in its Article 110, concerning when a 'Plan on Citizen Participation' will include the persons belonging to national minorities in the Plan. Furthermore, Article 79 of the constitution maintains the wording of 'significant share of the total population' for guaranteeing the right to have topographic signs in minority languages. The Advisory Committee considers that this may be interpreted differently across the territory, and recalls that 'clear and transparent procedures on how and when to institute the use of minority languages' should be set up 'to ensure that the right is enjoyed in an equal manner.'<sup>103</sup> The Advisory Committee expects that such wording may be considered for amendment when the constitution is next reviewed.

118. The right to display local place names on signage is respected in areas where persons belonging to the Albanian minority make up the majority of the local population, such as Ulcinj/Ulqin and Tuzi, based on the State report and the Advisory Committee's own observations. According to the information available, there does not appear to have been any consultations held with minorities who make up 5% or more of other municipalities' populations to determine whether topographical indications in their language would be desired in practice, but the Advisory Committee did not hear of any specific complaints in this regard. The Advisory Committee nevertheless recalls that 'the requirement of an absolute or relative majority in urban, municipal or local communities raised concerns in terms of compatibility with Article 11 of the Framework Convention.'<sup>104</sup> Whilst the formal requirement for a relative, local majority is not in the law in Montenegro, the practice appears to suggest that signs in minority languages are predominantly present in areas where persons belonging to national minorities make up the majority of the population.

<sup>101</sup> See Article 11, para.4 of the Law on Minority Rights: 'Within the territory of the local self-government units referred to in paragraph 2 of this Article [see above footnote], the names of authorities performing public powers, the name of the local self-government unit, the names of settlements, squares and streets, institutions, businesses and other entities and the topographical indications shall also be written in the language and alphabet of minority nations and other minority national communities.'

<sup>102</sup> See: [http://www.uniset.ca/microstates/me\\_Law-on-Local-Self-Government.pdf](http://www.uniset.ca/microstates/me_Law-on-Local-Self-Government.pdf).

<sup>103</sup> ACFC Thematic Commentary No.3, adopted on 24 May 2012, para.55.

<sup>104</sup> ACFC Thematic Commentary No.3, adopted on 24 May 2012, para.65.

*Recommendation*

119. The Advisory Committee again reiterates its call on the authorities to consult with minority representatives to ascertain whether there is a demand for topographical indications in minority languages and to ensure that this right is applied across the territory of Montenegro.

**Article 12 of the Framework Convention****Equal access to education and intercultural content***Recommendations from the two previous cycles of monitoring*

120. The authorities were urged to ensure that the local authorities and teachers were making use of the 20% allocation for teaching about subjects of their choice which 'affirm the value of local culture', and to ensure that textbooks were of adequate quality.

*Present situation*

121. The right to education in one's own language in public institutions is guaranteed by Article 79 of the constitution, as well as the right to have the history and culture of minority communities included in the general curriculum. Elementary school is free of charge and compulsory in Montenegro, beginning at age six and lasting for nine years. There then follows four years of secondary or vocational education, and then tertiary education at university level. In the Law on General Education, 20% of the curriculum is 'open content' which concerns 'affirming the value of local culture.'<sup>105</sup> This allotment can be used to educate about the history and culture of persons belonging to national minorities, according to the authorities.

122. Interlocutors of the Advisory Committee consistently raised concerns about how the 20% of the curriculum across all subjects, open to teachers to fill with teaching about the local area, is used. Some representatives of national minorities also reported concerns that they were rarely consulted by local teachers on this issue. The Ministry of Education has little oversight into how this allotment is used, the Advisory Committee was informed, and in an exchange with the Advisory Committee, the Ministry acknowledged that work needed to be done in order to ensure that this time was being well spent. Specifically, teacher training is already organised on how to best make use of this allotment, which is to be welcomed, although it is dependent on the will of teachers to attend.

123. The Advisory Committee was again informed of the dissatisfaction of persons belonging to the Albanian minority with the quality of translation of textbooks, and that certain cultural sensitivities, such as place names, were not being taken into account in the translations. Welcome steps to remedy this have been taken, in cooperation with the Albanian National Council, including the setting up of a drafting group which makes specific proposals on textbooks, and the intention of having reviewers and proof-readers to ensure that mistakes are avoided in future.

124. The subject 'civic education',<sup>106</sup> which the Advisory Committee noted in its previous Opinion and which promotes human rights, democracy and multicultural society<sup>107</sup>, is no longer a compulsory subject as it was in the previous monitoring cycle. Guideline 45 of the OSCE HCNM Ljubljana Guidelines

<sup>105</sup> State report, p.94.

<sup>106</sup> According to the Ministry of Education, Civic Education is, as of the school year 2017-2018, 'an elective course that is taught in VII and VIII or VIII and IX grade of primary school and includes education for democratic citizenship and human rights in order to prepare children and young people for active and responsible behaviour and life in a democratic society. The curriculum of the course is designed so that young people learn and practice the basic rules of democracy, learn about human and child rights, the values of a democratic society, different cultures, and prepare for life in a multicultural society, or develop their civic competences.'

<sup>107</sup> ACFC Second Opinion on Montenegro, ACFC/OP/II(2013)002,para.142.

states that ‘integrated education should also include teaching all pupils about the diversity in their society’. The Advisory Committee recalls that ‘school education should offer a fair reflection of the linguistic and cultural diversity of society and thereby promote the values of tolerance, intercultural dialogue and mutual respect’.<sup>108</sup> The Advisory Committee is therefore concerned at the downgrading of civic education and the possible impact its omission may have on intercultural relations.

125. According to information provided by the textbook agency, there is a significant number of authors from the Bosniak, Croat and Albanian minorities on the school curriculum, although representatives of the Bosniak community were dissatisfied with the number of authors from that community. The Advisory Committee recalls that ‘the mandatory curriculum should ‘include information on the history and contribution of minorities to the cultural heritage and the society of the State Party.’<sup>109</sup> The Advisory Committee was informed that there appears to be adequate inclusion of minority authors in the education system.<sup>110</sup> The Advisory Committee did not receive information on history teaching from the authorities, nor did it hear concerns from minority representatives. Nevertheless, it recalls that ‘it has underlined the importance of introducing multiple perspectives into history teaching’.<sup>111</sup>

#### *Recommendations*

126. The Advisory Committee calls on the authorities to ensure that tolerance, intercultural dialogue and mutual respect are among the core principles of education policy and practices, specifically through the reintroduction of the subject ‘civic education’ in the compulsory curriculum.

127. The Advisory Committee encourages the authorities to continue their constructive cooperation with minority representatives and organisations on the issue of textbooks, in order to ensure the quality of translations in particular.

128. The authorities should encourage schools to consistently make use of the possibilities offered in the general curriculum, including through cooperation with minority representatives and organisations, to reflect the identity and culture of persons belonging to national minorities; in parallel, the authorities should implement compulsory teacher training on the use of the 20% of the curriculum reserved for education on the local area, and increase the oversight of the Ministry of Education to monitor and assess how this allotted 20% is being used.

### **Situation of the Roma and Egyptians**

#### *Recommendations from the two previous cycles of monitoring*

129. The Advisory Committee urged the authorities as a matter of priority to make greater efforts to ensure that Roma children can access pre-school facilities, and to guarantee that the curriculum responded to the diverse needs of the groups involved. The authorities were also asked to address urgently the matter of Roma children being unable to attend school due to a lack of identity documents, and to increase efforts to tackle the difficulties facing Roma at all levels of the education system, involving the Roma Minority Council in the design, monitoring and evaluation of education programmes.

<sup>108</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.82.

<sup>109</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.82. See also [Ljubljana Guidelines](#), No. 45, ‘the education system should develop and teach a general compulsory curriculum [...] that includes teaching about the histories, religions, cultures, traditions and contributions of both minority and majority groups within the State, while reflecting different perspectives. Respect for diversity and pluralism should be mainstreamed into all subject areas covered by the curriculum.’ ps.55-56. See also Article 29(d) on the [Convention for the Rights of the Child](#).

<sup>110</sup> State report, p.99. See also [Fourth Report of the Committee of Experts of the European Charter for Regional or Minority Languages on Montenegro](#), 2017.

<sup>111</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.82.

*Present situation*

130. In 2016-17, 104 Roma and Egyptian children attended pre-school in Montenegro, accounting for 0.55% of the overall pre-school population. In 2017-18, this had increased to 190.<sup>112</sup> Initiatives have been introduced, including community mediators, to increase this figure further. In cooperation with UNICEF, the authorities have produced the Strategy for Preschool and Early Education 2016-2020, which aims to have all children ages three to six covered by pre-school education; at the time of writing the Strategy (2016), the enrolment rate was 53% and the attendance rate 40%. The Advisory Committee was informed that Roma and Egyptian families may often prefer that their children stay with family members in the early years, and so it welcomes the more multi-faceted approach, encompassing awareness-raising of the benefits of pre-school education amongst Roma and Egyptian communities, parent engagement, improving infrastructure and boosting professional competencies.<sup>113</sup>

131. Drop-out rates in Roma and Egyptian communities are moderately decreasing and there are gradual increases in the number of pupils completing education, as well as enrolment. Furthermore, with the increasing number of Roma and Egyptian displaced persons having regularised their status, the number of children unable to attend school because of a lack of documentation has significantly reduced. Additionally, Roma and Egyptian children are entitled to free textbooks (although efforts need to be made to ensure this is consistently applied<sup>114</sup>), and to scholarships for secondary school and university education. Whilst welcoming this significant progress, the Advisory Committee notes clusters of Roma and Egyptian children not currently enrolled the education system, such as the group met at the Bijela Gora settlement in Ulcinj/Ulqin, who possess Montenegrin passports. The Advisory Committee notes the authorities' position that, legally speaking, every Roma and Egyptian child can be enrolled in the education system regardless of the necessary documentation, and that no sanction will be brought if the documentation is not delivered by year's end. The Advisory Committee considers, however, that further steps in raising awareness and outreach in Roma and Egyptian communities, as well as improvements in their social and housing situation, may be necessary to improve attendance. The Advisory Committee notes that the drop-out rate in Roma and Egyptian communities remains higher than in the rest of the population, but welcomes the generally decreasing trend.<sup>115</sup> The Advisory Committee notes a survey carried out by the Ministry of Human and Minority Rights and quoted in the Strategy for the Social Inclusion of Roma and Egyptians 2016-2020, indicating that nearly three-quarters of Roma and Egyptians complete primary education.<sup>116</sup> It is, however, concerned that, according to a survey carried out by the UNDP and the World Bank, only one third of Roma aged 18-21 had completed compulsory primary education,<sup>117</sup> although both surveys from the Ministry of Human and Minority Rights and UNDP clearly show that there is a higher incidence of Roma and Egyptian girls dropping out of school, with UNDP reporting that 28% of Roma girls finish primary education (compared to 34% boys), and the Ministry survey reporting that 13.8% of Roma and Egyptian girls drop out of primary education (compared to 9.4% for boys). Factors such as early and forced marriage have an impact on the rate of girls dropping out, as noted in GREVIO's Baseline Evaluation of Montenegro in 2018.<sup>118</sup> The

<sup>112</sup> [European network of legal experts in gender equality and non-discrimination](#), Country Report Montenegro, 2018, p.55.

<sup>113</sup> [Strategy for Preschool and Early Education 2016-2020](#), UNICEF.

<sup>114</sup> See *Mladi Romi* shadow report, p.38: <http://mladiromi.me/eng/2014-07-21-09-36-07/documents/category/3-publikacije?download=62:shadow-report-montenegro-ngo-young-roma-2016> and Regional Cooperation Council conclusions 2017, p.3: <https://www.rcc.int/romaintegration2020/docs/57/policy-paper-from-the-second-national-platform-on-roma-integration-in-montenegro-podgorica-2017> and 2018, p.3: <https://www.rcc.int/romaintegration2020/docs/74/policy-brief-from-the-third-national-platform-on-roma-integration-in-montenegro-podgorica-2018>.

<sup>115</sup> [European network of legal experts in gender equality and non-discrimination](#), Country Report Montenegro, 2017 p.47.

<sup>116</sup> [Strategy for Social Inclusion of Roma and Egyptians 2016-2020](#), p.27.

<sup>117</sup> [Roma at a Glance Montenegro](#), Factsheet.

<sup>118</sup> See [GREVIO first \(baseline\) evaluation report on Montenegro](#), 2018, para.184.

Advisory Committee welcomes that preventing early and forced marriage is included in the 2016-2020 Strategy (instrument 2.4.3) under the objective of reducing the drop-out rate of Roma and Egyptian pupils, and will be carried out in cooperation with, *inter alia*, the Office for Combatting Trafficking in Human Beings, educational institutions, the Roma Minority Council and NGOs.

132. The Advisory Committee takes note of a project which employed Roma mediators to assist Roma pupils in pre-school and primary education, particularly with regard to language, in order to improve school achievement and reduce dropout rates.<sup>119</sup> When a school has 70 Roma and Egyptian pupils, it is entitled to a mediator, and this entitlement increases as the number of pupils increases, with 70 pupils being the threshold. Interlocutors of the Advisory Committee informed it that this programme could not be rolled out across the country, to other areas where it could be of most benefit to the Roma community. The Advisory Committee understands that 17 mediators have been hired, and since 2018 their appointment has a separate funding line from the Ministry of Education, having previously been funded by a NGO. The authorities were aiming to formalise the employment of the mediators, but this has not always been possible, and many were engaged on temporary, project-based contracts. There is a planned competition to recruit further mediators, in which preference is given to candidates from Roma and Egyptian communities. In this regard and if necessary, attention should be paid to increasing the number of persons belonging to national minorities who have the requisite competencies to be recruited. There was also a successful project on enrolling children from Roma and Egyptian communities in preschool education, which was not rolled out across the country.

133. The branch of the primary school in the Konik area which was segregated and about which the Advisory Committee expressed concern in its previous opinion has been closed down, with the pupils from that school attending other schools around Podgorica, and free transportation is provided. During a visit to the main site of the school operating near to the Konik settlement, the Advisory Committee witnessed integrated classes, with Roma and Egyptian children attending classes with non-Roma pupils, and with Roma and Egyptian pupils having additional classes in the official language. The Advisory Committee was also informed that children from the majority population learn about the history and culture of the Roma population, including through events such as World Roma Day. Additionally, the school director informed the delegation of a range of extra-curricular activities designed to encourage Roma and Egyptian pupils to attend, including music, dance and sports.

134. Whilst significant progress has been made in enrolling children from Roma and Egyptian communities at the primary level, the Advisory Committee is concerned at the lower number of pupils who continue to secondary education. According to information given by the authorities, in 2017/18 ninth grade (final primary school year) was completed by 78 students of Roma and Egyptian communities, and in 2018/19 38 pupils of Roma and Egyptian background enrolled in the first year of secondary school. Information provided by the authorities indicated, without giving specific figures, that these figures for 2018/19 are typical of previous years also. There are financial incentives in place, including 60 EUR per month scholarships for Roma and Egyptian pupils attending secondary school, and 150 EUR per month for Roma and Egyptian students attending university.<sup>120</sup> According to research from the World Bank and UNDP,<sup>121</sup> the completion rates for upper secondary are the lowest in the Western Balkans. There are very low numbers of Roma and Egyptian students attending university, with 20 students enrolling in 2016-17, but the authorities should follow the effects of the raft of policies being implemented, including mediators, scholarships and tuition fee exemption, on the university enrolment rate. Overall, the Advisory Committee is concerned at Roma and Egyptian children's effective access to education at all levels, and that, as raised at the Regional Cooperation Council meeting in 2017,

<sup>119</sup> See Strategy for Inclusion of Roma and Egyptians 2016-2020, p.28.

<sup>120</sup> State report, p.13.

<sup>121</sup> [Roma at a Glance Montenegro](#), Factsheet. UNDP, World Bank, April 2018.

attempts to reduce the dropout rate may be negatively affecting the quality and outcomes of education.<sup>122</sup>

#### *Recommendations*

135. The Advisory Committee reiterates its call on the authorities to provide effective access to education at all levels, particularly at pre-school, for all Roma and Egyptian children and to ensure it corresponds to identified needs, as well as raising awareness of the importance of early education amongst parents.

136. The Advisory Committee urges the authorities to take further steps to improve the attendance of Roma and Egyptian children in education, whilst not reducing the standard of education, including through community outreach emphasising the importance of education and tackling, among other problems, early forced marriage. Long-term support to the Roma mediators programme across pre-school and primary education should be provided, irrespective of the number of students, and the authorities should ensure that mediators are employed on secure, long-term contracts.

### **Article 13 of the Framework Convention**

#### **Private education for national minorities**

##### *Recommendations from the two previous cycles of monitoring*

137. In its second Opinion, the Advisory Committee invited the authorities to proceed with the process of recognition of minority educational establishments without undue delay.

##### *Present situation*

138. The right to establish educational associations for minorities is set out in Article 79 of the constitution. The school mentioned in the previous Opinion Medresa Tuzi Secondary School – a private Islamic school in Tuzi teaching in Bosnian and Albanian – which had been awaiting official recognition since 2008, was recognised by the National Council for Education in 2015. This was the only educational establishment which applied for such recognition during the period.

##### *Recommendation*

139. The Advisory Committee invites the authorities to continue to recognise private schools of national minorities without undue delays.

### **Article 14 of the Framework Convention**

#### **Teaching in and of minority languages**

##### *Recommendations from the two previous cycles of monitoring*

140. In previous monitoring cycles, the Advisory Committee found teaching of minority languages inadequate to meet demand, and not integrated into the regular school curriculum. The language needs of the Roma had also received little attention, and the authorities were asked to provide support to the education provisions of the Roma strategy, including the learning of Romani. The authorities were also called upon to intensify their dialogue with minority representatives in order to analyse existing demand, including from numerically smaller groups such as the Croat minority, for teaching in or of their minority languages.

<sup>122</sup> See also Regional Cooperation Council meeting conclusions, 2017, p.4: <https://www.rcc.int/romaintegration2020/docs/57/policy-paper-from-the-second-national-platform-on-roma-integration-in-montenegro-podgorica-2017>.

*Present situation*

141. Albanian language education is provided in areas where Albanians make up the majority of the local population, as well as in Podgorica. There are four pre-schools and 12 primary schools across Montenegro with instruction in Albanian, and four secondary schools. According to information transmitted to the Advisory Committee by the authorities, in 2018-19 this number of schools translates into 415 pupils at pre-school level, 2 620 pupils at primary level in Albanian-language schools, 1 007 at secondary level. Numbers at primary and secondary level show a gradual fall, in line with general population decline, whilst pre-school numbers are showing a steady increase.<sup>123</sup> There are a number of bilingual schools teaching in Albanian and Montenegrin languages, but this does not indicate that students receive an equal number of hours of teaching in each language; rather, some pupils take Albanian as their language of instruction, whilst others take Montenegrin, generally depending on their ethnic background. This means that there are two separate streams of monolingual education. There is the possibility for students with Montenegrin as language of instruction to take Albanian as an elective subject between the 6<sup>th</sup> and 9<sup>th</sup> grades (ages 11-15), and in classes with Albanian as language of instruction Montenegrin is compulsory.

142. During the Advisory Committee's visit to a primary school in Ulcinj/Ulqin, it was informed that over half of pupils eligible take Albanian as an elective subject. Whilst some classes are taken together in one school which the Advisory Committee visited – notably German language – it recalls that 'multilingual education open to students from all linguistic groups, including minorities and the majority, can, apart from having significant cognitive benefits for the individuals, contribute to intercultural comprehension and co-operation.'<sup>124</sup> Furthermore, the Advisory Committee recalls that it 'encourages the inclusion of minority languages in the public school system and in the mandatory curriculum'.<sup>125</sup> The Advisory Committee is concerned that this current system may intensify divides along ethno-linguistic lines in Montenegro's education system, which may ultimately entrench divides between communities.

143. There is an Albanian teacher training course at the University of Montenegro, and between 10 and 20 persons enrol each year. The course is 80% in Albanian and 20% in Montenegrin.

144. There are no classes in or of Romani language. The teaching of the Romani language is limited, interlocutors of the Advisory Committee have explained, because of the lack of codification of the language which could be taught widely. This has meant that little or no progress has been made on Romani-language education since the previous cycle. The Advisory Committee notes with interest, however, the on-going attempts to codify Romani at the regional level. Nevertheless, the Advisory Committee considers that the Romani language could be used orally at preschool or primary school, where grammar is not as important, and where the necessity for fully qualified teachers in a language is less.

145. The University of Montenegro took part in a regional effort to have teachers trained in Romani in Zagreb, but no applications were made from Montenegro. Part of the reason for this, the Advisory Committee was informed by Roma representatives, was because the course only credited 180 ECTS (European Credit Transfer System), which is not enough credits to teach a language in a school (240 are required). This meant that there was not sufficient interest from prospective students to take up the course. The Advisory Committee regrets this situation, and expects that the authorities and minority representatives can find a solution.

<sup>123</sup> Numbers in 2016-17, for example, were 261 at pre-school level, 2 720 at primary, and 1 051 at secondary.

<sup>124</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.72.

<sup>125</sup> [ACFC Thematic Commentary No.3](#), adopted on 24 May 2012, para.73.

146. As far as other minority languages are concerned, there is relatively limited provision of teaching in the languages. The Advisory Committee again notes that the teaching of the Croatian language in Tivat and Kotor is possible only through financial assistance from the Croatian Ministry of Science.

*Recommendations*

147. The Advisory Committee calls on the authorities to re-evaluate their approach to bilingual education and design comprehensive and long-term measures to enhance the availability of high-quality state language teaching in the public education system through a balanced approach that contains parallel measures to adequately protect and promote the languages of national minorities, including through the introduction of multilingual teaching methodology.

148. The Advisory Committee recommends that the authorities intensify their dialogue with regional partners and Roma representatives, with a view to codifying the main variants of the Romani language spoken in Montenegro.

**Article 15 of the Framework Convention**

**Representation of national minorities in elected bodies and public administration**

*Recommendations from the two previous cycles of monitoring*

149. The Advisory Committee called on the authorities to urgently review electoral legislation with a view to eliminating provisions which may have a discriminatory effect on the Roma, and to monitor the effects of recent amendments to electoral legislation to ensure that the principle of authentic representation is respected. The authorities were also asked to find ways to implement the constitutional right to proportional representation of persons belonging to national minorities in public services, and to ensure that the Roma are treated as key partners in governmental programmes, including the drafting, implementation and evaluation of action plans.

*Present situation*

150. Specific provisions of Article 94 of the Law on the Election of Councillors and Members of Parliament<sup>126</sup> allow for candidates in elections belonging to minorities to be elected with 0.7% of the vote, as opposed to 3% of the vote for any other political party. Candidates belonging to the Croat minority may be elected to parliament with 0.35% of the vote. The Croat political party has one Member of Parliament, the party representing Bosniaks two members, and a political party representing Albanians one. There is no Roma Member of parliament, nor a member belonging to the Muslim minority. The current cabinet of ministers, which is the executive separate from the legislative branch (parliament), is one third minorities. Five out of 24 cabinet members are from the Bosniak minority, and there is one each from the Croat, Muslim and Albanian minority.<sup>127</sup> The Advisory Committee recalls that states parties are required to create the conditions necessary for the effective participation of persons belonging to minorities. It also recalls that 'when electoral laws provide for a threshold requirement, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account.'<sup>128</sup> The Advisory Committee regrets that the electoral legislation has not been amended, meaning this threshold is set at 0.7% for other political

<sup>126</sup> [Article 94, 2](#)) 'where none of the candidate lists for election of MPs members of the Croatian people in Montenegro meets the requirements referred to in para.1 of this Article and item 1 of this paragraph, the most successful of them, with at least 0.35% valid ballots, shall acquire the right to one MP seat'.

<sup>127</sup> State report, p.106.

<sup>128</sup> [ACFC Thematic Commentary No.2](#): "The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs", adopted on 27 February 2008, para.82.

parties of numerically similar or larger minorities to the Croats, who have a threshold set at 0.35%, particularly given the fact that even though the Roma minority are similar in number to the Croat minority, no such provision is made for the Roma. In an exchange with the Advisory Committee, the authorities indicated that no change had been made because there is currently no political party representing the Roma in Montenegro, whilst Roma representatives expressed the view that it was unlikely that a political party would be formed without a realistic chance of it being elected. A study of the region has pointed out that changing this legislative norm would increase political participation within the Roma community.<sup>129</sup> In this context, the Advisory Committee reiterates its concern that this provision may have a negative impact on the political participation of the Roma and Egyptians, and may lead to discrimination, contrary to the provisions of Articles 4 and 15 of the Framework Convention.

151. The right to proportional representation in public services is protected under the constitution,<sup>130</sup> but it remains unachieved in practice, and minorities remain underrepresented across the state administration. According to the 2015 survey data,<sup>131</sup> in the largest dataset, covering 141 organs of the state administration based on 13 900 returned questionnaires, Montenegrins make up 74.76%, Serbs 11.24%, Albanians 2.51%, Bosniaks 5.62%, Muslims 2.46%, Roma 0.02%, Croats 0.76% and others 0.42%. The underrepresentation is less marked, though still persists, in the organs of local government, and has improved since 2011.<sup>132</sup> The Advisory Committee recalls that ‘comprehensive data and statistics are [...] instrumental to devise adequate legislative and policy measures to address the shortcomings identified,’<sup>133</sup> and welcomes in this regard the regular surveys carried out in order to assess the representation of minorities in the public services. The Advisory Committee recalls that ‘public administration should, to the extent possible, reflect the diversity of society.’<sup>134</sup> It notes in particular that Roma represent around 0.02% of employees of the state administration. It recalls that Roma and Egyptians ‘are often particularly under-employed in public administration and that this issue requires specific attention from the authorities. Their employment in public administration can contribute to a better image and increased awareness of such minorities in society at large, which in turn is likely to improve their participation at all levels.’<sup>135</sup> Whilst acknowledging the multi-faceted reasons for the situation, the Advisory Committee is nonetheless concerned at the fact that, according to the government’s own figures, only five persons belonging to Roma and Egyptian communities are employed in the state administration, despite the generally increasing level of education amongst Roma and Egyptian communities.

#### *Recommendations*

152. The Advisory Committee reiterates its call on the authorities to extend affirmative action for numerically small national minority communities, in particular to the Roma, to ensure equal treatment between such communities in respect of thresholds in the electoral legislation.

153. The Advisory Committee urges the authorities to take measures, including through legal incentives where appropriate, to improve minority representation in public services.

<sup>129</sup> [Multiculturalism in Public Policies](#), eds. Dr Goran Bašić, Prof. Dr Mitja Žagar, Prof. Dr Siniša Tatalović, ps. 176-179, 2018.

<sup>130</sup> See Article 79, para.10: ‘the right to proportionate representation in public services, state authorities and local self-government bodies’.

<sup>131</sup> State report, p.103-104.

<sup>132</sup> According to the State report: ‘National structure of employees (number and percentage) in the organs of local government (18). Of 3036 questionnaires, in the national terms, employees declared as: Montenegrins 1748 (57,58%), Serbs 628 (20,69%), Albanians 172 (5,67%), Bosniaks 229 (7,54%), Muslims 84 (2,77%), Roma 0 (0,00%), Croats 47 (1,55%), others 15 (0,49%), while according to the research from 2011, in national terms, employees declared as: Montenegrins 68,86%, Serbs 12,55%, Albanians 6,87%, Bosniaks 5,16%, Muslims 50 1,61%, Roma 0,00%, Croats 2,03%, others 0,74%’, p.103.

<sup>133</sup> [ACFC Thematic Commentary No.2](#), adopted on 27 February 2008, para.127.

<sup>134</sup> [ACFC Thematic Commentary No.2](#), adopted on 27 February 2008, para.120.

<sup>135</sup> [ACFC Thematic Commentary No.2](#), adopted on 27 February 2008, para.124.

## Institutional framework for the participation of national minorities in decision-making

### *Recommendations from the two previous cycles of monitoring*

154. The Advisory Committee acknowledged the important role Minority Councils have to play in enhancing the effective participation of national minorities, but urged the authorities to review the legal provisions related to the election and functioning of the Minority Councils.

### *Present situation*

155. The Advisory Committee notes that there are still six Minority Councils established under Articles 33-35 of the Law on Minority Rights, representing the Albanian, Bosniak, Croat, Muslim, Roma and Serb national minorities, and each with between 17 and 35 members. Half of each Council is composed of ex-officio members (MPs, mayors and presidents of municipal assemblies representing their respective minority), and half by representatives of civil society elected at electoral assemblies of Minority Councils. The Councils have an important role to play in promoting the interests and raising awareness of their respective minority. They are also entitled, *inter alia*, to propose amendments to legislation, set up educational establishments and give their opinion on school directors proposed to take charge of minority language schools. Minority groups making up less than 3% of the population will require 510 signatures to form a Minority Council (see Article 3). Article 2 of the Law on Minority Rights provides that national minorities should be 'historically tied to Montenegro', as noted under Articles 3 and 4 of this Opinion.

156. The Advisory Committee notes that reforms have been made to these institutions recently, especially with regard to their relationship with the Fund. The Presidents of the Councils still sit on the management board, but in order to eliminate possible conflicts of interest, their Councils can no longer apply for funding.<sup>136</sup> Members of the Project Evaluation Commission, the seven-member body which decides on the distribution of funds, may not be a member of a Minority Council.<sup>137</sup> As a counter-measure, the funding for Minority Councils was doubled to 8 100 EUR per month, although some representatives of some Minority Councils, particularly the Roma, reported that this still did not allow them to completely fulfil their mandate, especially in providing support to their community. Other reforms include formalising the financial reporting process, which increases the financial oversight of the Ministry of Human and Minority Rights.

157. The Advisory Committee is concerned that the regulation requiring minority groups to meet the 510 signatures threshold for minority groups is disproportionate, and may have an exclusionary effect on numerically smaller minority groups who fall within the definition of the law, who may wish to benefit now or in the future from the consultative mechanism of a Minority Council and to 'preserve their national identity', as per the Law on Minority Rights (Article 33).

158. Representatives of some Minority Councils raised concerns about the lack of clarity, as they perceive it, surrounding their legal status. To them, it is not clear whether they operate as an NGO or as an organ of the state, and some representatives of Minority Councils reported that NGOs receive preferential treatment when it comes to relations with the authorities. They indicated that they are unable to apply for funding like NGOs, because they are not NGOs, but nor is their legal status equivalent to that of a state institution. In an exchange on this issue with the Advisory Committee, the authorities cited Article 34 of the Law on Minority Rights, which gives Minority Councils the status of a legal person, which the Minority Councils reported to the Advisory Committee that they already knew.

<sup>136</sup> Law on Minority Rights and Freedoms, Article 36i: 'The right to participate at the public competition for the allocation of the funds referred to in paragraph 1 and 2 of this Article does not belong to councils of minority nations and other minority national communities.'

<sup>137</sup> Law on Minority Rights and Freedoms, Article 36k.

The Advisory Committee takes note of letters written by Minority Councils, including in cooperation with one another, to seek clarification from the Ministry; such requests were not answered, the Advisory Committee was informed, though the authorities indicated that their status had been clarified several times. The Advisory Committee expects that these issues can be clarified in the coming monitoring period.

159. Whilst the Advisory Committee acknowledges the good level of informal cooperation between Minority Councils of different minority national communities, it notes that no formalised, coordinating body representing all the Minority Councils has been created. Representatives of some Minority Councils indicated that such a body would be able to speak with one voice on issues affecting persons belonging to national minorities, and play a greater awareness-raising role of the history and culture of national minorities in Montenegro. Further discussions with representatives of Minority Councils should be envisaged, as to the set-up and role of such a body.

160. The Advisory Committee remains troubled by the absence of a mechanism guaranteeing gender balance in the composition of the Minority Councils, despite the adoption of rules governing the election of members of Minority Councils in September 2017.<sup>138</sup> According to information provided by the authorities, on average, 23% of the Minority Councils are made up of women, with no Minority Councils being formed by 50% or more of women. Further, Interlocutors also raised the political nature of the Minority Councils, which is also of concern to the Advisory Committee. Due to the regulations on establishing councils, they often have strong ties to and influence from national political parties, at the expense of the views of civil society, and this may have negative consequences for the focus of the Council on issues of concern to persons belonging to national minorities. This contributes to the perception expressed by certain interlocutors that Minority Councils are political projects led by national politicians, rather than speaking for the groups they represent.

#### *Recommendation*

161. The authorities should review the legal provisions relating to Minority Councils, including the threshold requirement for their establishment, and their legal status; concrete measures to ensure gender balance within the councils should be taken, and they should be involved in decision-making processes affecting them.

162. The Advisory Committee encourages the authorities to consult on the establishment of a coordinating body comprising representatives of all national minorities.

### **Effective participation in economic and social affairs**

#### *Recommendations from the two cycles of monitoring*

163. In the previous monitoring cycles, the authorities were urged to continue their efforts to develop economically the north of the country, and to increase efforts to develop and implement policies addressing the problems of the Roma in accessing employment, including through addressing discriminatory practices against Roma in cooperation with law enforcement. The authorities were also recommended to substantially improve the participation of Roma, especially Roma women, in the economic life of the country.

#### *Present situation*

164. The Advisory Committee notes the on-going efforts to enhance economic development in the north of the country, including through a number of projects aiming to improve the provision of utilities, including water and sewerage. The Advisory Committee recalls that 'State parties should take

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<sup>138</sup> National Gazette of Montenegro, No. 01-023-1714/17-1.

specific measures to increase the opportunities for persons belonging to minorities living in peripheral and/or economically depressed area, such as rural, isolated and border areas [...] to participate in socio-economic life.<sup>139</sup>

165. Based on unemployment figures from the authorities, persons belonging to Roma and Egyptian communities make up between 3% and 4% of the total unemployed population<sup>140</sup>, which is above their share of the population in general based on the 2011 population census. The Advisory Committee notes the efforts of the authorities to collect data on the situation of the Roma and Egyptians, in cooperation with the Employment Institute of Montenegro. Based on figures contained in the Strategy for Social Inclusion of Roma and Egyptians 2016-2020, in 2015 (the most recent figures given) 95% of Roma and Egyptian were 'persons without occupation and qualifications'. Demonstrating the lack of clarity, it is also reported in this same document that 83% of Roma and Egyptians are unemployed; of this number, 33% declare themselves to be 'unemployed person not seeking employment', meaning around 50% of Roma are unemployed and seeking employment, according to the Strategy for Social Inclusion. More recent research by UNDP and the World Bank puts the employment rate among marginalised Roma was at only 14% in 2017, versus 37% among non-Roma living in their vicinity.<sup>141</sup> The Advisory Committee wishes to underline that 'comprehensive data and statistics are [...] instrumental to devise adequate legislative and policy measures to address the shortcomings identified.' There is a general lack of consistent and reliable data relating to the economic participation of minorities, partly due to the fact that the declaration of ethnic affiliation in unemployment records is voluntary.

166. The Advisory Committee notes the efforts of the authorities to include persons belonging to Roma and Egyptian communities in 'active employment policy programmes' and in seasonal work programmes, and the measures set out in the Strategy, although interlocutors, including minority representatives and international organisations, raised concerns about the budget allocated to the Strategy. The Employment Agency can act as a mediator to assist unemployed persons belonging to Roma and Egyptian communities looking for employment, and there were subsidies available between 2015 and 2017 for businesses and companies who employ persons belonging to the Roma or Egyptian communities.

167. The Advisory Committee welcomes the construction of new housing under the Regional Housing Programme in Konik and Nikšić which provides accommodation for displaced persons (see Article 4). This Programme, however, is set up in the framework of providing housing solutions for displaced persons in the aftermath of the conflicts in the 1990s, and does not provide for the Montenegrin Roma and Egyptians. Both of these groups are covered under the Social Housing Law (Article 4) in which vulnerable groups, including, *inter alia*, Roma and Egyptians and displaced persons, are prioritised in the distribution of social housing. However, housing issues persist, notably in Ulcinj/Ulqin, Herceg Novi and Tivat. A number of interlocutors reported that the Montenegrin Roma and Egyptians also experience substandard living conditions, an issue which the Advisory Committee witnessed during the country visit. It visited a family of two adults and eight children (four of whom were not registered at birth, all of whom were not attending school) in the outskirts of Ulcinj/Ulqin, living in an improvised barracks in very poor conditions. The adult male reported that he had not been a refugee, but had come to Ulcinj/Ulqin in 1980, and that he was being denied work because his status was unclear. The facts of the specific situation are not to be established by the Advisory Committee, but it is concerned at the living conditions of this family, and indeed the clusters of housing issues experienced by displaced Roma and Egyptians and Montenegrin Roma and Egyptians alike. Interlocutors informed the Advisory Committee that, at the end of November 2018, there had been two

<sup>139</sup> [ACFC Thematic Commentary No.2](#), adopted on 27 February 2008, para.42.

<sup>140</sup> Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016-2020, p.54.

<sup>141</sup> [Roma at a Glance Montenegro](#), Factsheet. UNDP, World Bank, April 2018.

fires at different Roma settlements in Herceg Novi and Tivat in which 42 persons lost their homes. Besides the danger these settlements can represent to their inhabitants, the Advisory Committee recalls that 'substandard housing conditions [...] considerably affect [national minorities'] ability to participate in socio-economic life and can result in their further poverty, marginalisation and social exclusion.'<sup>142</sup>

168. NGOs alerted the Advisory Committee to issues of hygiene, sanitation and healthcare amongst the Roma community living in a derelict factory, also on the outskirts of Ulcinj/Ulqin, and during a visit to this community the Advisory Committee was informed of the lack of basic sanitation and utilities at this site, which has the potential to lead to health problems amongst this community. Welcome efforts have been made by the authorities to raise awareness of healthcare issues in Roma and Egyptian communities through numerous workshops.<sup>143</sup>

169. The Advisory Committee takes note of the multiple indicator cluster survey (MICS) carried out by MONSTAT in 2013 in cooperation with UNICEF, which documented many of the healthcare issues facing Roma and Egyptian women and children.<sup>144</sup> According to interlocutors, the 2013 survey does not have a sufficiently large sample size, but the Advisory Committee welcomes the information that a new MICS should be carried out in 2019, although this has not been confirmed by the authorities.

#### *Recommendations*

170. The Advisory Committee urges the authorities to increase efforts to regularly and systematically gather comprehensive, reliable data on the employment, economic and health situation of Roma and Egyptians, in compliance with international data protection standards.

171. The Advisory Committee calls on the authorities to continue their efforts to raise awareness of health issues in Roma and Egyptian communities, and to take appropriate measures to tackle such issues based on the identified needs, in close cooperation with those communities.

172. The authorities should take measures to improve the social and economic situation of Roma and Egyptian communities, particularly through increasing employment opportunities, in close cooperation with those communities.

### **Article 16 of the Framework Convention**

#### **New territorial divisions**

##### *Recommendations from the two previous cycles of monitoring*

173. The Advisory Committee urged the authorities to ensure that the rights of persons belonging to national minorities were taken into account when planning and implementing changes to the territorial division of the country, and that there was no negative impact on the right of persons belonging to national minorities to participate effectively in public affairs; additionally, authorities were asked to ensure that children belonging to national minorities continued to have access to education in minority languages irrespective of any territorial changes.

##### *Present situation*

174. Three new municipalities have been created since the previous monitoring cycle: Petnjica (2013), Gusinje (2014) and Tuzi (2018). The first two municipalities listed here have Bosnian as the

<sup>142</sup> [ACFC Thematic Commentary No.2](#), adopted on 27 February 2008, para.57.

<sup>143</sup> State report, ps.20-21.

<sup>144</sup> '[Montenegro and Montenegro Roma Settlements Multiple Indicator Cluster Survey 2013](#)', Statistical Office of Montenegro and United Nations Children's Fund, published September 2014.

majority language, whilst Tuzi has Albanian as its majority language. The creation of Tuzi municipality has been a long-standing goal of the Albanian political parties, and its creation has been completed in consultation with those parties.

175. The Advisory Committee recalls that 'it is essential that the specific impact on national minorities and the use of minority languages is taken into account in close consultation with national minority representatives when reviewing administrative borders, as the creation of larger self-government units may result in certain thresholds no longer being met.'<sup>145</sup> In this context, the Advisory Committee notes that the municipality of Tuzi does not include an Albanian-majority village (Fundina) near to its border. This village, with a population of fewer than 200 inhabitants, remains within the Podgorica municipality and has not been included in the Albanian-majority municipality of Tuzi.<sup>146</sup> At the time of adoption, negotiations on the inclusion of part of this village were on-going.

*Recommendation*

176. The Advisory Committee recommends that the authorities carry out any future territorial changes in close consultation with those persons belonging to national minorities living in the areas affected, minority representatives and organisations.

**Articles 17 and 18 of the Framework Convention**

**Cooperation with neighbouring countries**

*Recommendations from the two previous cycles of monitoring*

177. The Advisory Committee previously noted Montenegro's good neighbourly relations and the absence of difficulties in cross-border contacts, and the authorities were encouraged to maintain this approach through implementing existing bilateral agreements and concluding additional ones as required.

*Present situation*

178. The Advisory Committee is pleased to note that the bilateral agreement between Croatia and Montenegro signed in 2009 and ratified in 2011 is implemented through meetings of the Intergovernmental Mixed Committee, made up of representatives of the respective governments. Meetings are held biennially, and involve representatives of the Croat minority in Montenegro and the Montenegrin minority in Croatia.

179. Montenegro has maintained generally good relations with neighbouring countries and the Advisory Committee was not informed of any particular difficulties experienced by persons belonging to national minorities in maintaining cross-border contacts, with, for example, Croatia providing a teacher to a school in the Kotor area and funding for a Croatian newspaper, and Serbia providing funds for the renovation of the Serb House in Podgorica.<sup>147</sup>

*Recommendation*

180. The Advisory Committee encourages the authorities to maintain positive relations with neighbouring countries, to continue to implement the existing bilateral agreements and conclude

<sup>145</sup> [ACFC Thematic Commentary No.4](#), adopted on 27 May 2016, para.81.

<sup>146</sup> Law on Territorial Organisation of Montenegro, Article 5 on Podgorica; Article 7 (17a) on Tuzi.

<sup>147</sup> Serb House in Podgorica received 3.4 Million Euros from the Serbian government. 600,000 EUR also paid by the Serbian government to Serb institutions in Montenegro. See: <https://www.slobodnaevropa.org/a/srbi-crna-gora-narod/29457957.html>.

additional ones as required, in a spirit of good neighbourliness, friendly relations and cooperation between states.

### III. CONCLUSIONS

181. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Montenegro.

#### Positive developments following three cycles of monitoring

182. Montenegro maintains a positive approach to the application of the Framework Convention, and, in particular, the Advisory Committee notes general progress in the legislative and institutional framework. Penalties for those who commit acts of discrimination were increased, hate speech was criminalised, and, most notably, the 'promotion of equality' was provided for in the Law on the Prohibition of Discrimination, which states that steps which aim to address the inequality and disadvantage experienced by, *inter alia*, persons belonging to national minorities, should not be considered as discrimination as prohibited by the law. Trust in the institution of the ombudsperson, the Protector of Human Rights, has increased during the period, and the caseload has increased accordingly.

183. There is a good framework for the distribution of funding to preserve and promote minority cultures. Concerns from within the government about the integration and cohesion of society have led to a more intercultural approach to project-financing through the Fund for the Protection and Realisation of Minority Rights. The first projects allocated funding in 2018 from the Fund after the restructuring show an increase in the number of projects engaging with various minority groups, which should work towards the promotion of intercultural dialogue.

184. The right to education in one's own language in public institutions is guaranteed by the constitution, as well as the right to have the history and culture of minority communities included in the general curriculum. The curriculum contains 20% 'open content' which concerns 'affirming the value of local culture.' This can be used to educate about the history and culture of persons belonging to national minorities, according to the authorities. In terms of teaching in and of minority languages, Albanian language education is provided in areas where Albanians make up the majority of the local population, and in Podgorica.

185. Compared to previous monitoring cycles, the situation of the Roma and Egyptians, particularly the displaced persons, has improved substantially. The Konik camp is officially closed, with new durable housing being constructed at the site – although a few families still were not rehoused. Regarding education, the situation is improving for Roma and Egyptians, especially around Konik where the previously segregated preschool is closed.

186. Some minorities are well represented in government and the Croats have a lower threshold than other minorities for elections to the parliament. At the local level, national minorities (with the exception of Roma) are better represented in the public services than at national level, although Montenegrins still make up, disproportionately, the vast majority of public servants overall.

#### Issues of concern following three cycles of monitoring

187. The citizenship criterion for persons to be recognised as minorities has not been lifted, despite recommendations in previous cycles to the contrary. Concerns about the independence of the Protector of Human Rights persist, since it must get its budget approved by the Ministry of Finance, and its financial resources may not be sufficient for it to carry out its full mandate; despite recommendations

to amend the method of appointment of the Protector, he/she can still be appointed or dismissed by a simple majority of parliament. A rulebook to be used across government to collate data on discrimination cases is not being followed. There is also no equality body separate from the Protector, which means its lack of power of sanction could restrict the ability of the Protector in its function as an equality body to adequately remedy discrimination.

188. Despite the positive reforms to the Fund, issues remain on the transparency of its work and its evaluation of projects funded. There is a lack of clarity surrounding the display of symbols of states, with a law in force which prohibits such a display, which should be dealt with in forthcoming legislation.

189. The authorities carry out, in cooperation with international organisations and partners, data gathering on so-called 'ethnic distance'. Between 2010 and 2017, social distance between almost all groups increased, and this has contributed to the Advisory Committee's view that divides between communities may be deepening and becoming more marked. Incidents of religious discord between different Orthodox Churches have also been noted. Hate speech is criminalised, but there is little monitoring of social media by the authorities because no agency has a mandate to do so.

190. The Ministry of Education has little oversight into how 20% of the curriculum reserved for education on the local area is used. There are a number of bilingual schools teaching in the Albanian and Montenegrin languages, but this does not indicate that students receive an equal numbers of hours of teaching in each language, but rather that some pupils take Albanian as their language of instruction, whilst others take Montenegrin, generally depending on their ethnic background. This creates two separate streams of monolingual education. The Advisory Committee is concerned at the downgrading of the subject 'civic education' to elective rather than compulsory.

191. Housing issues persist for displaced and Montenegrin Roma and Egyptians, often due to their residing in informal settlements, leading to a lack of basic sanitation. Efforts are required to raise awareness of health issues within Roma and Egyptian communities to ensure effective access to health care. This is particularly the case in the Konik area, where reproductive health and drug use may become a significant issue in the coming period. Awareness should also be raised of the importance of education at all stages, and the dropout rate for Roma and Egyptians is still high. A successful programme of Roma mediators is only being slowly rolled out across the country. Roma and Egyptians are more likely to be unemployed, and the authorities undertake programmes to help persons belonging to Roma and Egyptian communities into employment, but more comprehensive and coordinated efforts are needed.

192. The affirmative action taken in respect of electoral legislation for the Croat minority has not been extended to the Roma, despite being of similar numerical size. In general, minorities are underrepresented in public services, especially Roma. Unemployment data disaggregated by ethnicity is unavailable, although estimates are made for Roma and Egyptian communities. Comprehensive equality data gathering may allow remedies such as employment programmes to be more effective.

## **Recommendations**

193. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

**Issues for immediate action<sup>148</sup>**

- **take measures to improve the social and economic situation of Roma and Egyptians, particularly through increasing employment opportunities and ensuring effective access to health care, education and housing, in close cooperation with the communities concerned and based upon regularly and systematically gathered, comprehensive, reliable data on the situation of persons belonging to these communities;**
- **take further steps to improve the attendance of Roma and Egyptian children in education, whilst not reducing the standard of education, including through community outreach emphasising the importance of education and tackling, among other problems, early forced marriage. Long-term support to the Roma mediators programme across pre-school and primary education should be provided, irrespective of the number of students, and the authorities should ensure that mediators are employed on secure, long-term contracts;**
- **reintroduce the subject ‘civic education’ in the compulsory curriculum; introduce compulsory teacher training on the use of the 20% of the curriculum reserved for education on the local area to ensure that tolerance, intercultural dialogue and mutual respect are among the core principles of education policy and practices; design comprehensive and long-term measures to enhance the availability of state language teaching in the public education system through a balanced approach that contains parallel measures to adequately protect and promote the languages of national minorities, including through the introduction of multilingual teaching methodology;**
- **extend affirmative action for numerically small national minority communities, in particular to the Roma, to ensure equal treatment between such communities in respect of thresholds in the electoral legislation.**

**Further recommendations<sup>149</sup>**

- consider lifting the potentially limiting criterion of citizenship contained in the Law on Minority Rights, which may have a discriminatory effect; ensure that minority representatives are consulted during the planning of the next population census, due to take place in 2021, particularly on questions of ethnic affiliation, religion and first language;
- provide the office of the Protector with the appropriate and necessary financial resources in order to reinforce the Protector of Human Rights’ financial and political independence, and in order for it to effectively carry out its full mandate, including awareness-raising activities; to consider re-evaluating the procedure by which the Protector is appointed or dismissed to require a qualified majority; and to pursue the implementation of the rulebook on collecting discrimination data and reporting it to the Protector of Human Rights effectively;
- cooperate with Roma and Egyptian representatives and organisations and the Roma National Council on the drafting of the next Strategy for the Social Inclusion of Roma and Egyptians and its associated action plans to ensure that the goals and measures set are achievable, to provide such measures with the appropriate level of funding to ensure their implementation, and to provide adequate follow-up to ensure goals set are achieved; reassess data on stateless persons on the territory, and provide a proper legal status to all stateless persons to allow them to access their rights;

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<sup>148</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

<sup>149</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

- ensure, with regard to the Fund for the Protection and Realisation of Minority Rights, that minority representatives and organisations are able to consult with the competent authorities regarding the application for funding. More information on the distribution of funding should be available to the public, and the process should be more transparent, with project reports and evaluations available to the public; continue to support intercultural projects, both financed by the Fund and from other organs of the administration responsible for the distribution of funding to projects designed for national minority communities; clarify the situation regarding the display of symbols of national minorities in the forthcoming legislation;
- pay special attention to the prevention of hate speech in the consultations on the new Media Law, and to ensure that the law addresses the problem of online hate speech, clearly defines responsibilities for hate speech published, and mandates a state agency to monitor and sanction instances of hate speech online; maintain a positive approach to data gathering on levels of tolerance in society, and remain alert to divisions indicated by such data; take effective measures to tackle multiple discrimination, domestic violence and forced marriage within Roma and Egyptian communities, particularly through ensuring that current and future strategies and associated action plans are implemented in close cooperation with members of the communities concerned, contain measures which have adequate funding and support, and which are followed up on to ensure effective implementation.
- adopt the new law on religious freedom without undue delay, and subsequently proceed with the restitution of religious property;
- consider funding methods which could provide longer term sustainability for programmes and radio or television stations, as well as the print media, addressing persons belonging to national minorities; actively recruit, employ and train journalists belonging to national minorities, particularly the Roma and Egyptian communities;
- continue their constructive cooperation with minority representatives on the issue of textbooks, in order to ensure the quality of translations in particular; encourage schools to consistently make use of the possibilities offered in the general curriculum, including through cooperation with minority representatives and organisations, to reflect the identity and culture of persons belonging to national minorities; increase the oversight of the Ministry of Education to monitor and assess how this allotted 20% reserved for education on the local area is being used; provide effective access to high-quality education at all levels, particularly at pre-school, for all Roma and Egyptian children and to ensure it corresponds to identified needs, as well as raising awareness of the importance of early education amongst parents;
- intensify dialogue with regional partners and Roma representatives with a view to codifying the main variants of the Romani language spoken in Montenegro;
- take measures, including through legal incentives where appropriate, to improve minority representation in public services; review the legal provisions relating to Minority Councils, including the threshold requirement for their establishment, and their legal status; concrete measures to ensure gender balance within the councils should be taken, and they should be involved in decision-making processes affecting them; consult on the establishment of a coordinating body comprising representatives of all national minorities.