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

Third Opinion on Bosnia and Herzegovina adopted on 7 March 2013

EXECUTIVE SUMMARY

National minority laws are now in place both at State and Entity level and in some cantons. However, the implementation of these laws remains weak, especially in the fields of culture, education and the establishment of effective consultation and participation mechanisms, and is hampered by a lack of coordination among the authorities concerned as well as high thresholds applied to the exercise of some rights. Moreover, the continuing failure to amend the State Constitution means that persons belonging to national minorities, along with other persons who do not identify themselves as belonging to one of the three constituent peoples, are still deprived of the possibility of acceding to certain political offices at State level.

The 1991 census still serves as the basis for many decisions affecting national minorities although it no longer corresponds to today's realities in Bosnia and Herzegovina. While the new census planned for October 2013 should provide welcome data about the composition of Bosnian society today, it is vital that the questions regarding ethnicity, religion and language are designed in such a way as to ensure full respect for the principle of free and optional self-identification and to allow clearly for the expression of multiple affiliations.

Questions related to ethnicity still create dividing lines in Bosnia and Herzegovina. Political debates continue to be dominated by relations among the constituent peoples. Politicians frequently take divisive stances, which are taken up and amplified by the media.

Persisting segregation in education breaches the rights of the children concerned and exacerbates the negative messages they receive. The use of separate “national” curricula for the teaching of history, geography and religion is also detrimental to the dialogue and interaction of children.

While progress has been made towards ensuring that Roma do not lack identity documents, Roma continue to suffer from high unemployment rates, exclusion from access to social insurance, poor health and substandard living conditions. Roma children also face persistent inequalities with regard to access to education.

Issues for immediate action

- **Make all questions relating to ethnic or national affiliation in the forthcoming census optional; ensure, in consultation with national minorities, that the possibilities of self-identification allow clearly for the expression of multiple affiliations and for identification with groups other than one of the constituent peoples or national minorities; undertake awareness-raising measures among persons belonging to national minorities in advance of the census and pursue efforts to ensure their effective participation in the census process;**
- **Move forward rapidly – and in time for the amendments to apply to the 2014 elections – towards amending the Constitution and other relevant legal provisions so as to eliminate the exclusion of “Others”, including persons belonging to national minorities, from running for presidential office and for office as a member of the House of Peoples of Bosnia and Herzegovina, adopting an approach that enhances the participation of all without further entrenching divisions and ensuring that persons belonging to national minorities are directly involved and adequately consulted in this process;**
- **Take as a matter of priority all necessary steps to eliminate segregation in education, in particular through accelerating the work to abolish all remaining cases of “two schools under one roof” and replace them with integrated education, as well as through working to avoid the development of mono-ethnic schools in areas inhabited by a mixed population, drawing in this context on the experiences of areas where successful integrated education is in place;**
- **Ensure that the existing common core curriculum is applied in every school in Bosnia and Herzegovina and extend the subjects it covers to include history, geography and religion; introduce inclusive and multi-perspective teaching of these subjects;**
- **Ensure that the implementation of the Action Plan on the Educational Needs of Roma and Other National Minorities is adequately funded and evaluated; ensure that Roma children are not prevented from enrolling in school because they lack identity papers; develop further practices that strengthen the link between Roma families and schools; take resolute measures to improve the implementation of the Action Plans for Roma Employment, Health and Housing and address the situation of Roma living in informal settlements.**

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

THIRD OPINION ON BOSNIA AND HERZEGOVINA

1. The Advisory Committee adopted the present Opinion on Bosnia and Herzegovina 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 (hereinafter the State Report), received on 22 May 2012, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Sarajevo, Tuzla, Brčko and Banja Luka, from 5 to 9 November 2012.

2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Bosnia and Herzegovina. 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 Bosnia and Herzegovina, adopted on 27 May 2004 and 9 October 2008 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 11 May 2005 and 9 December 2009.

4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Bosnia and Herzegovina.

5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Bosnia and Herzegovina 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. The Advisory Committee would also like to bring to the attention of States Parties that on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's Opinion and other monitoring documents, aiming at increasing transparency and at 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 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities).

I. MAIN FINDINGS

Monitoring process

6. Bosnia and Herzegovina has maintained its constructive attitude to the monitoring procedure under the Framework Convention. In June 2011, the authorities held a seminar in Sarajevo on the implementation of the Framework Convention, in which representatives of the national minorities and of the Advisory Committee participated. The Advisory Committee's second Opinion and the Committee of Ministers' Resolution have been translated into one of the country's languages. The Advisory Committee notes with regret, however, that Bosnia and Herzegovina has still not submitted proposals for experts in respect of Bosnia and Herzegovina to be elected on the list of experts eligible to the Advisory Committee.

7. The Advisory Committee also regrets that the State Report was submitted approximately one year late. It notes with interest that in order to prepare this Report, the authorities consulted relevant institutions at State, Entity and cantonal level as well as municipalities where significant minority communities were registered in the 1991 census, and that non-governmental bodies active in the field of minority protection were also consulted. While welcoming the involvement of a wide variety of stakeholders in the reporting process, the Advisory Committee notes that not all the relevant institutions appear to have responded. It emphasises the importance of ensuring that all the relevant State, Entity, cantonal and local authorities are genuinely engaged in protecting the rights of persons belonging to national minorities throughout subsequent monitoring cycles and that their work in this field is duly coordinated.

General overview of the implementation of the Framework Convention after two monitoring cycles

8. The Advisory Committee notes that there has been considerable progress in enacting legislation for the protection of national minorities at the various levels of competence in Bosnia and Herzegovina. There are now national minority laws in place at State and Entity level, and the enactment of cantonal legislation for the protection of national minorities is also advancing; some cities and cantons also make particular efforts to support the cultural activities of national minorities. However, the implementation of the rights of national minorities is hampered by the lack of coordination of the various levels of authority concerned, many of which display little sense of responsibility for promoting the rights of persons belonging to national minorities. The high thresholds that must be met in order to create any obligations on local authorities regarding the implementation of certain minority rights leave the exercise of these rights largely dependent on the political will of the authorities in the areas where national minorities live. While the establishment of consultation mechanisms for national minorities at State and Entity level and in some cantons is commendable, problems in the appointments procedures for these mechanisms and the lack of interest shown in their work by their parliamentary interlocutors limit the capacity of these bodies to influence the affairs of national minorities.

9. Overall, little account is taken in policy-making of the needs of persons belonging to national minorities. This is largely because there is still a strong tendency amongst politicians to pit the interests of different constituent peoples¹ against each other rather than to seek to advance the common interests of all citizens. This approach hinders efforts to build a common civic

¹ The preamble of the Constitution of Bosnia and Herzegovina names Bosniacs, Croats and Serbs as constituent peoples, and makes a distinction between the constituent peoples and so-called "Others".

identity,² runs directly counter to the spirit of promoting mutual respect, understanding and co-operation that is central to the provisions of the Framework Convention, is detrimental to all citizens and undermines efforts made to improve the situation of persons belonging to national minorities.

Institutional and legislative framework

10. The continuing failure to amend the State and Entity constitutions means that persons belonging to national minorities, along with other persons who do not identify themselves as belonging to one of the three constituent peoples, are still deprived of the possibility of acceding to certain political offices. Ethnic distribution arrangements laid down by the Entity constitutions for the allocation of a number of other political posts also leave little room for effective participation of persons belonging to national minorities.

11. Following the enactment of laws on national minorities at both State and Entity level, new laws on national minorities have been enacted by Sarajevo and Tuzla Cantons. However, the implementation of all of these laws remains weak, especially as regards support for national minority cultures, education and the establishment of effective consultation and participation mechanisms.

12. Problems of coordination and clarity in the division of competences between State, Entity, cantonal and local levels on issues pertaining to national minorities mean that many authorities appear to feel little sense of responsibility for protecting national minorities, and pose challenges to the equal treatment of persons belonging to national minorities across the country. Given the complex institutional structure of Bosnia and Herzegovina, it is especially important to improve coordination and clarity in this field.

Equality and protection against discrimination

13. Comprehensive antidiscrimination legislation introduced through the 2009 enactment of the Law on the Prevention of All Forms of Discrimination is welcome, although there appears as yet to be little public awareness of the importance of this legislation and of the remedies for which it provides in cases where discrimination occurs. The lack of a systematic, comprehensive approach to cases that may involve discrimination moreover means that both direct and especially indirect discrimination may not be being adequately taken into account.

14. The constitutions of Bosnia and Herzegovina and of the Entities still distinguish between Bosniacs, Croats and Serbs, as constituent peoples, and “Others”. This distinction is highly problematic. The term “Others” is ambiguous in that it covers both persons belonging to national minorities and persons who neither belong to a national minority nor identify themselves as belonging to one of the three constituent peoples, without expressly recognising the existence of either. It is moreover felt to be offensive by the persons that it designates and to place them in a situation inferior to that of the constituent peoples.

² See also in this context paragraph 7 of Recommendation 1735 (2006), adopted by the Parliamentary Assembly of the Council of Europe on 26 January 2006.

Intercommunity relations

15. Questions related to ethnicity still create dividing lines in Bosnia and Herzegovina, and little is done by political leaders to encourage a sense of common belonging or a shared civic identity. Nonetheless, the pilot census appears to have provided some encouraging signs that the general population may have progressed beyond the blinkered outlook of many political leaders in this respect.

16. While physical attacks against minority returnees have diminished in the past few years, numerous attacks have occurred against religious properties and sites. Political debates moreover continue to be dominated by questions concerning relations between the three constituent peoples, with politicians frequently taking divisive stances. These positions are taken up and amplified by the mainstream media.

17. For children, these negative messages are compounded through segregation in schools, which occurs both through the continued existence of “two schools under one roof” and through growing trends towards the creation of mono-ethnic schools. Although the reasons for the introduction of the former in the immediate post-war context of Bosnia and Herzegovina are well known, their maintenance in practice is in the long term indefensible and runs directly counter to the development of the spirit of tolerance, mutual understanding and co-operation that is central to the Framework Convention. The conflation of religion with ethnic affiliation and its instrumentalisation in public debates as well as in schools also serves to perpetuate divisions in Bosnian society.

Information and data on persons belonging to national minorities

18. The last census, carried out in 1991, still serves as the basis for many decisions affecting national minorities although it no longer corresponds to today’s realities in Bosnia and Herzegovina. While welcome efforts were made in 2009 to build up a more accurate picture of the size and situation of the Roma community, in some parts of the country a high proportion of Roma households did not wish to be recorded and no efforts have been made to evaluate the numbers and needs of other national minorities in the country. In general, the current lack of reliable, up-to-date information makes policy-making with respect to national minorities haphazard at best; more use should be made of independent research data to develop targeted measures to promote the full and effective equality of persons belonging to national minorities.

19. The delayed census now planned for October 2013 should provide welcome, up-to-date data about the composition of Bosnian society today. However, it is vital that the census questions regarding ethnicity, religion and language are designed, in consultation with representatives of national minorities, in such a way as to ensure full respect for the principle of free and optional self-identification and to allow clearly for the expression of multiple affiliations. Concerted efforts must also be made to involve national minorities in the preparation and organisation of the census.

The situation of the Roma

20. Considerable work has been done over the past few years towards ensuring that Roma do not lack identity documents, and encouraging progress has been made in this field. However, the absence of a free and universal birth registration system means there are still a number of

obstacles to birth registration, in particular for Roma, and the lack of identity documents is still cited as one of the major causes of the Roma population's lack of access to other rights.

21. As part of Bosnia and Herzegovina's participation in the Decade of Roma Inclusion, the authorities have adopted Action Plans for Roma in the fields of health, employment and housing. These include a range of positive measures designed to remedy the inequalities experienced by Roma in these fields. However, serious flaws in the design and operation of these measures reduce their effectiveness, and Roma continue to suffer from very high unemployment rates, exclusion from access to social insurance, poor health and substandard living conditions. Roma children also face persistent inequalities with regard to access to education, with enrolment rates low and illiteracy and dropout rates high. While a number of measures are in place to improve Roma children's access to school, these are still insufficient and their success remains highly dependent on the levels of commitment and trust that they generate.

22. Prejudice against Roma also persists. This exacerbates the problems they face in accessing social rights, with some Roma reporting that health care has been denied them, even in emergency situations, on the grounds of their ethnic origin.

Visibility of national minorities' languages and cultures

23. The overwhelming focus in political spheres on the situation of the constituent peoples means that national minorities continue to be sidelined from public debates. They also suffer from a low level of visibility in the mainstream media, despite legal provisions requiring public broadcasters to include specific programmes for national minorities in their broadcasting schedules and to devote portions of their weekly broadcasting schedules to addressing matters relating to national minorities. The possibility of setting up a radio station intended for persons belonging to national minorities has not been taken up. Support for cultural activities of national minority associations and organisations moreover remains limited and ad hoc.

24. The thresholds set in the provisions of the State Law on National Minorities governing the use of national minority languages in relations with municipal authorities and for the display of topographical information remain high, with no obligation arising for the municipal authorities unless a national minority constitutes an absolute or relative majority of the relevant population. The State Law moreover does not provide for municipalities to be able to choose to allow for the use of national minority languages for the above purposes unless one-third of the relevant population belongs to a national minority. While the Entity Laws are more flexible in the latter respect, there are still no cases where municipalities have taken steps to allow for the use of minority languages in contacts with them and very few where villages display topographical signs in minority languages.

25. The development of a manual on national minorities for use in schools in recent years is welcome, although uptake of the manual has so far been relatively limited and in practice, the languages and cultures of national minorities remain virtually absent from school curricula.

Teaching in and of minority languages

26. The requirements laid down by law regarding the provision of teaching in minority languages have not been softened since the Advisory Committee's second Opinion, and remain high, with no obligation to provide teaching in minority languages unless students belonging to

the relevant national minority constitute one-third of the school population. In practice, these requirements are not met anywhere in Bosnia and Herzegovina. As regards the teaching of minority languages through additional, optional classes, very few schools provide for such classes and most teaching of minority languages continues to occur outside the school environment.

27. The lack of appropriate textbooks, teaching materials, qualified teachers and available premises moreover hampers the efforts of national minorities to promote the teaching of national minority languages and leaves them largely dependent on the support of their kin-States in this field.

Participation

28. Councils of National Minorities are now operational not only at State level and in both Entities, but also in Tuzla and Sarajevo cantons. However, problems have in some cases been encountered regarding the composition of these Councils, notably due to the politicisation of appointments procedures to the State Council and the high number of members provided for in the Council of the Federation. These problems, together with the lack of interest displayed in their work by their parliamentary interlocutors, limit the Councils' capacity to influence the affairs of national minorities. Problems regarding the transparency of appointments to the Roma Board, affecting its representativeness, have also been reported.

29. After the election of 35 national minority representatives in the local elections of 2008, a significant drop was recorded in 2012, with only 29 national minority representatives elected. The causes of this drop need to be analysed, in close consultation with persons belonging to national minorities, with a view to overcoming any difficulties identified before the next local elections.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Scope of application

Recommendations from the two previous cycles of monitoring

30. In its previous monitoring cycles, the Advisory Committee invited the authorities to pursue a flexible approach with regard to the scope of application of the Framework Convention and to consider, as appropriate, its application to groups other than those recognised in the State Law on National Minorities. It also called on the authorities to address as a priority the problems faced by those Roma and other persons belonging to national minorities whose legal status remained uncertain.

Present situation

31. The Advisory Committee notes that according to the State Law on National Minorities,³ the scope of the term “national minorities” is limited to citizens,⁴ a limitation reinforced by the similar wording used in the relevant laws of the Entities.⁵ Moreover, while the list of 17 national minorities expressly recognised in the State Law is open-ended,⁶ the recognition of persons as belonging to any possible further national minorities is conditional on their fulfilling the same criteria as the minorities already recognised, including having citizenship.

32. The Advisory Committee again draws attention to the fact that conflicts in the region and their aftermath have left many persons without a clear legal status, and that this situation affects Roma in particular. While progress has been made in remedying the lack of personal documents of many Roma (see further below under Article 4), this issue has not been fully resolved and has in turn created difficulties regarding the confirmation of their citizenship. The Advisory Committee considers that the authorities should take these difficulties into account when considering the personal scope of application of minority rights in Bosnia and Herzegovina and should especially ensure that Roma whose citizenship has not been confirmed are not excluded from benefitting from the protection provided by the Framework Convention.

Recommendation

33. The Advisory Committee strongly encourages the authorities to pursue a flexible approach with regard to the scope of application of the Framework Convention, in line also with

³ Article 3 of the Law on the Protection of Rights of Persons Belonging to National Minorities 2003.

⁴ The Advisory Committee notes that on 23 September 2011 the Constitutional Court of Bosnia and Herzegovina declared unconstitutional Articles 17 and 39(1) of the Law on Citizenship of Bosnia and Herzegovina, which provided that voluntary acquisition of citizenship of another State would lead to the loss of citizenship of Bosnia and Herzegovina unless a bilateral agreement existed between Bosnia and Herzegovina and the other State. Following the failure of the State Parliament to amend the relevant provisions, the Constitutional Court ruled on 28 September 2012 that they ceased to have effect.

⁵ Law on National Minorities of the Republika Srpska of 2004 and Law on National Minorities of the Federation of 2008.

⁶ Paragraph 2 of Article 3 of the Law reads as follows: “Bosnia and Herzegovina shall protect the position and equality of persons belonging to national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians, and others who satisfy requirements from paragraph 1 of this Article.”

the report of the Venice Commission on Non-Citizens and Minority Rights,⁷ and that they consider its application to groups other than those recognised in the State Law on National Minorities.

Persons belonging to the constituent peoples in a minority situation

Recommendations from the two previous cycles of monitoring

34. In previous monitoring cycles, the Advisory Committee invited Bosnia and Herzegovina to consider, in consultation with those concerned, giving persons belonging to constituent peoples in a minority situation the possibility of relying on the protection of the Framework Convention, as an additional tool to respond to specific needs.

Present situation

35. The Advisory Committee notes that persons belonging to constituent peoples who live in areas where they do not belong to the majority continue to experience discrimination in daily life, including in access to employment and pension rights. While the entry into force of comprehensive anti-discrimination legislation is welcome (see below, Article 4), this alone will not suffice to remedy entrenched and wide-ranging discrimination against persons in this situation. The Advisory Committee notes that extending the protection of the Framework Convention to persons belonging to constituent peoples in a minority situation, on a case-by-case basis, could provide an additional tool for addressing the issues faced by these persons without this implying a weakening of their status as constituent peoples, and may as such be of interest to persons in this situation. It furthermore emphasises that such an approach would be fully in line with the provisions of the Framework Convention.

Recommendation

36. The Advisory Committee encourages the authorities to consider, in close consultation with those concerned, extending the application of the Framework Convention to persons belonging to constituent peoples in a minority situation. It observes that this approach could be examined on a case-by-case basis.

National minorities in the State and Entity Constitutions

Recommendation from the two previous cycles of monitoring

37. In its previous monitoring cycles, the Advisory Committee invited the authorities to consider introducing more adequate terminology to refer to national minorities at the constitutional level, drawing on the terminology used in the State and Entity laws on national minorities, in order to put an end to their exclusion from public affairs.

Present situation

38. While it is welcome that all of the legislation specifically devoted to national minorities in Bosnia and Herzegovina – including new legislation adopted at cantonal level (see below, Article 5) – refers expressly to national minorities, the Advisory Committee notes with regret that there has been no change in the language used at constitutional level to refer to national minorities. The Constitutions of Bosnia and Herzegovina and of the Entities still distinguish between Bosniacs, Croats and Serbs, as constituent peoples, and “Others”. The Advisory Committee observes once again that the use of the term “Others” is problematic for several

⁷ European Commission for Democracy Through Law, Report on Non-Citizens and Minority Rights, adopted on 15-16 December 2006, CDL-AD(2007)1.

reasons: national minorities are not recognised as such at constitutional level; the term “Others” is felt by those that it designates to be offensive and to place them in a situation inferior to that of the constituent peoples; and the term is ambiguous in that it applies both to persons belonging to national minorities and to persons who neither belong to a national minority nor identify themselves as belonging to one of the three constituent peoples.

39. The Advisory Committee observes that the *Sejdić and Finci* judgment of the European Court of Human Rights⁸ requires amendments to be made to the Constitution of Bosnia and Herzegovina. The necessary process of executing this judgment accordingly also creates an opportunity to rectify the language used to refer to national minorities in the Constitution of Bosnia and Herzegovina.

Recommendation

40. The Advisory Committee again calls on the authorities to introduce adequate terminology at constitutional level to refer to national minorities and invites them in this context to draw on the terminology used in the State, Entity and cantonal laws on national minorities.

Right to self-identification

Recommendations from the two previous cycles of monitoring

41. In its previous monitoring cycles, the Advisory Committee expressed concern at frequent open references to individuals’ ethnicity, in particular in the context of access to political posts and public service jobs, without adequate safeguards of the right to be treated or not to be treated as a person belonging to a given ethnic group, and called on the authorities to ensure that adequate guarantees for the protection of personal data were provided in relevant legislation.

Present situation

42. While recognising the importance of the availability of data on ethnic origin (see comments in respect of Article 4 below), the Advisory Committee again recalls that the right to be treated or not to be treated as a person belonging to a given ethnic group, as contained in Article 3 of the Framework Convention, must be fully respected.⁹ Against this background, it is particularly problematic that the Election Law as well as a number of provisions of Entity constitutions and legislation governing access to public service employment still require that candidates for a wide variety of posts declare their ethnic affiliation. Even though the Advisory Committee understands that this largely results from the system established under the Dayton Agreement, which helped to end the armed conflict, the Advisory Committee continues to be deeply concerned by this prolonged and exaggerated emphasis on ethnicity.

Recommendation

43. The Advisory Committee calls on the authorities to take resolute measures to ensure that the right to free and optional self-identification as guaranteed by Article 3 of the Framework Convention is fully respected in legislation governing access to political and public service posts and is duly applied in practice.

⁸ *Sejdić and Finci v. Bosnia and Herzegovina*, applications nos. 27996/06 and 34836/06, judgment of 22 December 2009 (Grand Chamber); see further below, Article 4 – Discrimination in access to political posts.

⁹ See also in this context the Advisory Committee’s Thematic Commentary n° 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, paragraph 152 (Appendix), and its Thematic Commentary n° 3, The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, paragraphs 16-18.

Population census

Recommendations from the two previous cycles of monitoring

44. In its previous monitoring cycles, the Advisory Committee stressed that a future census should make questions relating to ethnic or national affiliation optional, recommended that possibilities of self-identification should not be limited to affiliation either with one of the constituent peoples or with a national minority and encouraged the authorities to promote debate in society at large on this subject.

Present situation

45. The Advisory Committee notes with interest that a population census in Bosnia and Herzegovina is planned for October 2013 – the first such exercise to be conducted since 1991 – although it deeply regrets that the census has been subject to significant delays due, *inter alia* to difficulties in enacting the necessary legislation. The census is expected to provide up-to-date information on the population of Bosnia and Herzegovina for the first time since the end of the war, including information broken down by ethnic affiliation, religion and language. Census forms have been translated for information purposes into the languages of all 17 national minorities, along with background information in these languages. The Advisory Committee also welcomes the fact that in the pilot census conducted in 60 localities in October 2012, the questions related to ethnic affiliation and religion were optional and a semi-open list was used for these categories. Enumerators were instructed not to read out the various pre-defined answers and it was possible for individuals to specify their ethnicity and religious conviction freely or to choose not to answer at all.¹⁰ However, the Advisory Committee notes with concern reports that little was done to consult national minorities as to the contents of the census form prior to the pilot census, which has led to a certain loss of trust in the census process amongst persons belonging to national minorities. It welcomes the indication from the Agency for Statistics that the latter is seeking to co-operate with the State Council of National Minorities regarding the final census form.

46. As regards the contents of the questions relating to ethnic affiliation, religion and language and the different options provided for answering these questions, the Advisory Committee notes that it was not possible to tick multiple boxes for any of the questions related to self-identification in the pilot census, although multiple answers were possible for other questions. Moreover, it was not possible to tick one box from the pre-defined list and specify an additional ethnic affiliation in the space provided for free answers.¹¹ The Advisory Committee is concerned that this situation may create confusion in cases of persons identifying with more than one ethnic group and may even dissuade them from expressing multiple affiliations. It emphasises the importance for individuals in this situation of being able to express their multiple ethnic identities as an integral part of the process of free, voluntary self-identification, and of

¹⁰ The question concerning ethnicity included four pre-defined options: “Bosniac”, “Croat”, “Serb” and “Not declared” and a space in which any other ethnic affiliation expressed by the respondent could be recorded. Likewise, the question concerning religion included six pre-defined options: “Islamic”, “Catholic”, “Orthodox”, “Agnostic”, “Atheist” and “Not declared” and a space in which any other religious conviction expressed by the respondent could be recorded.

¹¹ Thus, for their answer to be considered valid for processing purposes, a person having for example one Bosniac and one Czech parent and who identified with both ethnicities could not simply tick the “Bosniac” box and add the word “Czech” in the free space. Rather, he or she had to specify both ethnic affiliations in writing in the space provided for free answers, without ticking the “Bosniac” box provided. Likewise, a person who identified with two constituent peoples (for example because they had one Croat and one Serb parent) had to specify their identity in writing in the space provided for free answers, without ticking either or both of the “Croat” or the “Serb” boxes provided.

having this factor duly taken into account in subsequent analyses of the relevant data. The Advisory Committee underlines moreover that in line with UNECE and EUROSTAT recommendations,¹² census questions relating to ethnicity must be optional and open-ended, and include the possibility of multiple affiliations, in order for the census results to reflect effectively each individual's choice.

47. The Advisory Committee has also been given to understand that terms such as "Catholic" and "Orthodox", which are pre-defined categories on the census form, are generally understood in Bosnia and Herzegovina as referring to the dominant churches in the country (i.e. the Roman Catholic and Serbian Orthodox churches), and that persons who adhere to other branches of these religions (such as Ukrainian Greek-Catholic or Russian Orthodox) will specify this spontaneously. The Advisory Committee considers that the results of the pilot census should be analysed carefully in this respect, to assess the extent to which this supposition is borne out in practice and whether any modifications need to be introduced in the census form to avoid confusion.

48. The Advisory Committee welcomes the fact that the Agency for Statistics is seeking to co-operate with the State Council of National Minorities so as to ensure that, for the full census, persons belonging to national minorities are present in municipal census committees and amongst census enumerators, in particular in areas where national minorities are present in substantial numbers. It notes that these measures may help to increase the trust of persons belonging to national minorities in the census process, and observes that this is especially important for the Roma, who are often reluctant to declare their ethnicity (on this point, see also below, Article 4). It moreover emphasises the importance of ensuring that all enumerators are fully trained to inform respondents of the voluntary nature of questions related to ethnicity and religion as well as of the principle of free self-identification. It also draws the attention of the authorities to the need to raise awareness among persons belonging to national minorities, both via the media and in consultation with the representatives of the national minorities, as to the importance of the census, in order to promote full participation.

49. Finally, it has been reported to the Advisory Committee that a significant proportion of respondents in the pilot census identified themselves as "Bosnian" – an interesting development as it may tend to show the emergence of a common civic identity. However, the Advisory Committee regrets that this has led to some public calls by politicians not to self-identify as Bosnian, as in these politicians' view such declarations may be detrimental to one or other of the constituent peoples. The Advisory Committee deeply regrets this discourse and emphasises that, in line with the principles of Article 3 of the Framework Convention, persons should never be pressured to identify themselves as belonging to any particular group but should rather be encouraged to feel safe in expressing their identity freely and voluntarily.

Recommendations

50. The Advisory Committee calls on the authorities to make all questions relating to ethnic or national affiliation in the forthcoming census optional. It encourages the authorities, in consultation with representatives of national minorities, to ensure that the possibilities of self-identification allow clearly for the expression of multiple ethnic affiliation and for identification with groups other than one of the constituent peoples or national minorities. It also encourages the authorities to ensure that any problems encountered during the pilot census regarding free

¹² United Nations Economic Commission for Europe, Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, prepared in cooperation with the Statistical Office of the European Communities (EUROSTAT), New York and Geneva, 2006, Chapter IX, Ethno-cultural characteristics.

self-identification in the fields of ethnic affiliation, religion and language are resolved rapidly, in consultation with national minorities, and to pursue their efforts to ensure the latter's effective participation in the census.

51. The Advisory Committee recommends that the authorities undertake awareness-raising activities among persons belonging to national minorities in advance of the census, in co-operation with minority representatives. These activities should include information about the importance and usefulness of the collection of data on the ethnic composition of the population, as well as about the guarantees in place to ensure the protection of personal data.

Article 4 of the Framework Convention

Legislation to combat discrimination and existing remedies

Recommendations from the two previous cycles of monitoring

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

Present situation

53. The Advisory Committee welcomes the enactment of comprehensive anti-discrimination legislation at State level in 2009.¹³ It also notes with interest that the State-level Human Rights Ombudsman institution is now fully operational and has replaced the two previous Entity institutions, which have been disbanded. The Institution of Human Rights Ombudsman is designated under the anti-discrimination law as the central institution competent to guarantee protection against all forms of discrimination, and published its first report on discrimination in Bosnia and Herzegovina in February 2012.¹⁴ The Advisory Committee welcomes this very positive development but is concerned that cutbacks made to the budget of this Institution may be disproportionately affecting its capacity to work effectively in this field. It also notes that according to the current internal structures of the Institution, the Department for the Protection of the Rights of National, Religious and Other Minorities is separate from the Department for the Elimination of All Forms of Discrimination. It observes that in order to provide the most effective assistance to persons belonging to national minorities regarding their complaints, it is vital to ensure that a clear, systematic and comprehensive approach is taken to complaints involving possible discrimination and that there is very close coordination and communication between these two departments.

54. The Advisory Committee notes with concern the conclusion of the Ombudsmen that citizens remain very poorly informed of the possibility of addressing discrimination complaints to the Institution of Human Rights Ombudsman, and that there is significant under-reporting of discrimination in Bosnia and Herzegovina as well as little recourse to the courts in such cases.¹⁵

¹³ Law on the Prevention of All Forms of Discrimination, enacted by the Parliamentary Assembly of Bosnia and Herzegovina on 23 July 2009; in force since 6 August 2009.

¹⁴ Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2011, Banja Luka, February 2012.

¹⁵ *Ibid.*, p7.

The Ombudsmen have indicated¹⁶ that in the period up to March 2012, four complaints have been received in which the complainants alleged discrimination based on association with a national minority: three in the field of public employment and one in the field of health. In other complaints lodged by persons belonging to national minorities in that period, the complainants did not allege discrimination and the Ombudsmen did not find that discrimination had occurred.¹⁷ The Advisory Committee is concerned that little account appears to be taken of possible indirect discrimination in the rare cases where persons belonging to national minorities have complained to the Ombudsmen. The focus in such cases appears to have been essentially on whether the letter of the law was correctly applied, with little attention paid to whether the relevant legal provisions themselves had a disproportionately negative impact on some groups of the population.

55. The Advisory Committee is concerned not only that awareness of discrimination amongst citizens – and in particular persons belonging to national minorities – is low,¹⁸ but also that cases in which direct or indirect discrimination may have occurred alongside the independent violation of a right may be being missed or not dealt with through a systematic, comprehensive approach. The refusal to provide health care to persons without the necessary documents, for example, may be the result of the same manner of applying the law to all individuals, but has a disproportionate impact on Roma, who are much more likely to be lacking the necessary documents (on the access of Roma to health care, see also below, Article 15). The failure to emphasise the indirectly discriminatory aspects of cases such as this is unfortunate as it means that indirect discrimination is likely to persist, as measures designed to combat this aspect of a problem are not necessarily identified or taken.

Recommendations

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

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

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

Discrimination in access to political posts

Recommendations from the two previous cycles of monitoring

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

¹⁶ See third State Report of Bosnia and Herzegovina, ACFC/SR/III(2012)003, p51.

¹⁷ Complaints of discrimination on ethnic grounds have also been low: 53 complaints were received in 2009, 14 in 2010 and 43 in 2011. They were however the most common form of complaint lodged in 2011, forming 22.5% of the 191 complaints received in total. See Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2011, Banja Luka, February 2012, pp12-13.

¹⁸ See also Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Annual Report for 2010, Banja Luka, March 2011, Chapter 7.

them in this context to pursue efforts to reform the Constitution, with a view to eliminating discrimination against persons who do not belong to the constituent peoples and to enabling them to participate effectively in public affairs.

Present situation

60. The Advisory Committee notes with deep concern that no changes have been made to the Constitution of Bosnia and Herzegovina in order to remedy the exclusion of persons belonging to national minorities from access to certain political posts. This is the case despite the delivery of a judgment of the European Court of Human Rights in December 2009 concluding that the requirement that the applicants (who identified themselves as Roma and Jewish respectively) declare affiliation with a constituent people in order to be eligible to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina were in breach of the ECHR.¹⁹ While various bodies have been set up to propose solutions (most recently a Joint Commission established within the Parliament of Bosnia and Herzegovina, with the specific task of addressing the execution of the *Sejdić and Finci* judgment), deadlines have been set and promises made to achieve results, the 2010 elections were held under the same rules as those found to have breached the Convention, subsequent deadlines have been ignored,²⁰ no agreement has yet been reached on how to move forward on these issues, and discussions on this matter have systematically become embroiled in disputes between the constituent peoples on how to safeguard their positions in the political system of Bosnia and Herzegovina. All of this occurs to the apparent exclusion of any real interest in resolving the key issue at stake in this case, namely the need to ensure that persons who do not identify themselves as belonging to one of the three constituent peoples, including persons belonging to national minorities, are not automatically excluded from standing for certain political offices in the country. It is particularly significant in this respect that the current Joint Commission includes only one person belonging to a national minority, who moreover has only observer status with no right to speak, and that proposals put forward by the Council of National Minorities for the execution of the *Sejdić and Finci* judgment have been left aside.

61. The Advisory Committee draws the attention of the authorities to the Court's finding that "while...there is no requirement under the Convention to abandon totally the power-sharing mechanisms peculiar to Bosnia and Herzegovina and...the time may still not be ripe for a political system which would be a simple reflection of majority rule,...there exist mechanisms of power-sharing which do not automatically lead to the total exclusion of representatives of the other communities [i.e. persons not belonging to one of the constituent peoples]".²¹ The Advisory Committee stresses in this respect the particular importance of ensuring both that this judgment is rapidly executed – in order for the relevant constitutional amendments to enter into force in time to apply to the 2014 elections – and that it is not executed in a way that would further entrench the segregation and division of the country. It moreover underlines that minorities should be able to participate effectively at all political levels, from the State to the local level (see further below, Article 15).

62. In this context the Advisory Committee notes with interest that on 30 January 2013, Sarajevo Canton unanimously approved amendments to its Constitution that will place "Others"

¹⁹ *Sejdić and Finci v. Bosnia and Herzegovina*, applications nos. 27996/06 and 34836/06, judgment of 22 December 2009 (Grand Chamber).

²⁰ See e.g. Joint Statement by Commissioner Füle and Secretary General Jagland on Bosnia and Herzegovina, Strasbourg, 4 September 2012, Council of Europe Press Release DC 088(2012).

²¹ *Sejdić and Finci v. Bosnia and Herzegovina*, applications nos. 27996/06 and 34836/06, judgment of 22 December 2009 (Grand Chamber), § 48.

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

Recommendations

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

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

Civil registration and access to identity documents, particularly for Roma

Recommendations from the two previous cycles of monitoring

65. In its previous monitoring cycles, the Advisory Committee invited the authorities to take more resolute measures to solve the remaining cases of non-registration of births and of lack of personal identity documents among the Roma population.

Present situation

66. Considerable work has been done over the past few years towards ensuring that Roma do not lack identity documents. New legislation on birth registration was adopted in the Republika Srpska in 2009 and in the Federation in 2011.²² According to information provided by the authorities, research conducted several years ago showed that between 3 500 and 7 000 persons lacked identity papers; thanks to work carried out since then by the Ministry of Human Rights and Refugees together with UNICEF, UNHCR and other partners, the authorities consider that the process of registration is now largely completed, with only a few hundred people still lacking identity documents. A local NGO, *Vaša Prava*, continues to work with Roma communities to resolve the remaining cases.

67. While the Advisory Committee notes these encouraging developments with interest, it observes with concern that the absence of a free and universal birth registration system means that there are still a number of obstacles to birth registrations, in particular for children not born in hospitals, children living in remote areas, refugees and children belonging to minority groups, and that these problems are particularly acute for the Roma population.²³ It was moreover particularly struck during its visit to Bosnia and Herzegovina by the fact that – despite the

²² See United Nations Committee on the Rights of the Child, Concluding Observations on the consolidated second to fourth reports of Bosnia and Herzegovina adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BIH/CO/2-4, paragraphs 4(a) and 4(d).

²³ See UNCRC Concluding Observations, CRC/C/BIH/CO/3-4, § 35

progress made in resolving cases of persons without ID – the lack of identity documents is still cited as one of the major causes of the Roma population’s lack of access to other rights.

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

Recommendations

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

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

Data collection

Recommendations from the two previous cycles of monitoring

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

Present situation

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

73. The Advisory Committee observes that this uncertainty as to the real number of Roma living in the country undermines the capacity of Bosnia and Herzegovina to assess the main challenges and specific measures needed to improve their access to rights. Moreover, the Advisory Committee notes with regret reports that the database set to record the needs of Roma

* 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.

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

74. It also emphasises that – as the authorities’ 2009 efforts to identify the number and needs of Roma persons indeed show – nothing requires the authorities to wait until the results of the census have been processed in order to take steps to assess the specific needs and demands of persons belonging to national minorities. It particularly stresses that independent research can provide a vital source of data that can be analysed for the development of targeted measures designed to promote the full and effective equality of persons belonging to national minorities.

Recommendation

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

Article 5 of the Framework Convention

Legislation on national minorities

Recommendations from the two previous cycles of monitoring

76. In previous monitoring cycles, the Advisory Committee observed that measures were needed to advance the application of the State and Entity legislation on national minorities and considered that coordination between the various levels of authorities, consistent implementation of the legislation and regular monitoring of its implementation were needed.

Present situation

77. The Advisory Committee notes with interest that since its previous Opinion, two cantons in the Federation of Bosnia and Herzegovina have adopted legislation with respect to national minorities: Tuzla Canton in 2009 and Sarajevo Canton in 2011. Both of these cantons have also since set up Councils of National Minorities at cantonal level. It welcomes these positive steps taken towards better protection of minority rights in these cantons.

78. Despite the legal framework in place – which now includes legislation at the level of the State, both Entities and two cantons of the Federation – and the strong position of the

Framework Convention in the legal system of Bosnia and Herzegovina,²⁴ the Advisory Committee regrets that implementation of the relevant legislation remains weak and its application in practice continues to pose problems. This is notably true in fields such as support for national minority cultures (see below), education (see Articles 12 and 14) and the establishment of effective consultation and participation mechanisms (see Article 15). The Advisory Committee furthermore notes that the lack of coordination between authorities at State, Entity and cantonal level and lack of monitoring of the extent to which the provisions of the various laws have been implemented in practice continue to have a negative impact on the advancement of minority rights in Bosnia and Herzegovina.

Recommendation

79. The Advisory Committee again stresses the need for more resolute and effective measures to advance the application of State, Entity and new cantonal legislation on national minorities and for stronger coordination between the various levels of authorities to ensure that the law is implemented consistently. It recommends that the implementation of the law be regularly monitored and steps taken rapidly to resolve weaknesses identified.

Support for national minority cultures

Recommendations from the two previous cycles of monitoring

80. In its previous monitoring cycles, the Advisory Committee called on the authorities to allocate more substantial support to enable national minorities to maintain and develop their cultural heritage and language, to inform national minorities adequately of existing opportunities to receive support and to involve national minority representatives more consistently in decision-making regarding the allocation of support.

Present situation

81. Although the various laws in force require the State, Entities, cantons and municipalities to earmark funds in their budgets to support the activities of national minority associations,²⁵ these provisions do not tend to translate into long-term support for such activities in practice. The Advisory Committee notes with interest that a Strategy for Cultural Policy was adopted at State level in 2008 and includes as one of its priorities the “further affirmation of multiculturalism and cultural community... and, in particular, fostering cultural particularities of each of [the] nationalities and national minorities [of Bosnia and Herzegovina], with full support to statutory activities carried out by national, cultural and educational societies and to their contribution to the promotion of culture and protection of cultural and artistic heritage and language”. However, in practice few minority associations receive support directly from the State, and the amount of support provided at this level remains very low.²⁶ It appears that most financing at State, Entity, cantonal and municipal level is awarded to ad hoc activities as part of budgetary envelopes for which national minority organisations have to bid on a project-by-project basis. The Advisory Committee emphasises that in view of the small size of the groups

²⁴ See notably Annex I to the Constitution of Bosnia and Herzegovina, Article 2(2) of the State Law on National Minorities and Article 2(2) of the Law on National Minorities of the Federation.

²⁵ The State Law on National Minorities as amended in 2005 (Article 8) and the Laws on National Minorities of the Republika Srpska (Article 5) and the Federation (Article 6) entail an obligation to earmark specific funds in the budgets of the State, Entities, cantons, towns and municipalities to support the work of national minorities’ associations.

²⁶ The Ministry of Civil Affairs of Bosnia and Herzegovina has indicated that it allocated a total of 6 000 BAM (approximately 3 000 EUR) to projects of the Ukrainian and Czech minorities in 2009 and 12 000 BAM (approximately 6 000 EUR) to projects of the Jewish and Ukrainian minorities in 2010.

concerned, support to maintaining culture and identity is essential and there is a demand, *inter alia* from the Albanian community.

82. According to the authorities, culture is a field of activity where NGOs tend to be very active, and some cities and cantons provide strong support to the cultural activities of national minorities.²⁷ The Advisory Committee notes that in the Federation of Bosnia and Herzegovina, where culture and cultural activities are the responsibility of the cantons, the situation also varies widely from one canton to the next, with not all cantons providing support to all national minorities present there. Overall, it is at municipal level that the most active measures are taken to support the cultural activities of national minority associations, meaning that locally based activities are more likely to be supported than activities with Entity- or country-wide visibility.

83. The Advisory Committee notes with regret that support to national minority associations and organisations remains limited and ad hoc and that these bodies as well as the Councils of National Minorities consistently report both that insufficient funding is provided and that they are not adequately consulted in this field. It also observes that the lack of coordination between the authorities at the various levels in Bosnia and Herzegovina continues to create additional difficulties for national minority associations in coordinating their activities throughout the country.

Recommendation

84. The Advisory Committee reiterates its call on the authorities at all levels to provide regular and more substantial support to national minorities in order for them to maintain and develop their cultural heritage and languages. It again calls on the authorities to involve national minority representatives more consistently in decision-making concerning the allocation of such support.

Public funding of religious institutions of persons belonging to national minorities

Present situation

85. The Advisory Committee notes that the State Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina recognises four churches as “historically based” in Bosnia and Herzegovina, namely the Serbian Orthodox Church, the Islamic Community, the Roman Catholic Church and the Jewish Community.²⁸ No other churches or religious communities are presently recognised as entitled to receive public funds from the budget of the Republika Srpska.

86. The Advisory Committee has been informed that the Republika Srpska Ministry for Education and Culture rejected a request of the Ukrainian Greek-Catholic Church²⁹ for

²⁷ The authorities cited Sarajevo, Banja Luka, Tuzla, Zenica-Doboj and Middle Bosnia as the cities/cantons that most actively support the cultural activities of national minorities.

²⁸ See Article 8(2) of the State Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina. This Law also confirms the continuity of all other churches and religious communities in Bosnia and Herzegovina of which the legal personality had been recognised prior to its entry into force (Article 8(2)), makes provision for newly formed churches and religious communities to acquire legal personality (Article 8(3)) and sets out a uniform legal framework within which all churches and religious communities in Bosnia and Herzegovina shall act and be equal in rights and obligations, without any discrimination (Article 1(1)). Various other provisions of State and Entity law make similar provisions.

²⁹ The Ukrainian Greek-Catholic Church is a *sui juris* (autonomous) church in full communion with the Holy See; it is organised in Bosnia and Herzegovina as the Greek-Catholic Vicariate of Križevci Eparchy and registered by the Ministry of Justice of Bosnia and Herzegovina in the unified register of churches and religious communities.

recognition as a beneficiary of grants made to religious communities within the annual budgetary appropriations of the Republika Srpska in January 2012³⁰ on the grounds that it is not organisationally distinct from the Roman Catholic Church and is consequently not entitled in its own right to financial assistance. The Advisory Committee accordingly understands that at present, in contrast with the churches and religious communities recognised by law as historically based in Bosnia and Herzegovina, the Ukrainian Greek-Catholic Church receives no public funding directly from the relevant Entity authorities, and also receives no such funding indirectly via the Roman Catholic Church. It is concerned that all churches and religious communities not recognised by law as historically based in Bosnia and Herzegovina would appear to be likewise unable to access public funding in the Republika Srpska – a situation which, by definition, is likely particularly to affect persons belonging to national minorities.

87. The Advisory Committee moreover notes that the Ukrainian Greek-Catholic Church has been engaged in proceedings since 2009 for recognition as a beneficiary of grants made to religious communities within the annual budgetary appropriations of the Republika Srpska.³¹ It expects that the relevant courts and the Institution of Human Rights Ombudsman will take all necessary steps to ensure that the above proceedings are handled fairly and expeditiously.

Recommendation

88. The Advisory Committee recommends that the authorities of the Republika Srpska re-examine the provisions currently in force regarding the allocation of financial assistance under the Entity budget to churches and religious communities, in order to ensure that the rules in force do not discriminate, whether directly or indirectly, against persons belonging to national minorities.

Article 6 of the Framework Convention

Tolerance and community relations

Recommendations from the two previous cycles of monitoring

89. In previous monitoring cycles, the Advisory Committee urged the authorities at all levels to take more resolute measures to promote intercultural dialogue and mutual understanding between the different ethnic and religious groups. It also invited the authorities to ensure that the public had easy access to media supervisory bodies and complaints systems and that the Communications Regulatory Agency was in a position to continue its independent monitoring of the media.

Present situation

90. The Advisory Committee observes with deep regret that political debates in Bosnia and Herzegovina generally continue to be dominated by questions concerning relations between the three constituent peoples. Politicians frequently take divisive stances, emphasising the differences between constituent peoples and portraying those belonging to a group other than their own as a threat. These positions are taken up and amplified by mainstream media. As a result, ethnic tensions between constituent peoples are fuelled rather than defused, and dividing

³⁰ Decision No. 07.041/059-533/10 of 17 January 2012.

³¹ These include administrative proceedings before the Banja Luka District Court (case no. 110 U 008950 12 U, filed in February 2012 against the above-mentioned decision of 17 January 2012), civil law proceedings for discrimination, brought before the Banja Luka Higher Commercial Court (case no. 57 0 Ps 086986 10 Ps, filed in 2010) and a complaint filed with the Human Rights Ombudsman of Bosnia and Herzegovina (complaint no. Ž-BL-03-231/10, filed in April 2010).

lines accentuated rather than bridges built. The Advisory Committee is deeply concerned at this situation, which has clearly not improved in recent years. It stresses that, as part of implementing the Framework Convention, States Parties should promote mutual respect, understanding and co-operation amongst all persons living on their territory.

91. As a result of this situation, persons classified as “Others” in the terminology of the constitution – including persons belonging to national minorities – remain sidelined from political debates and largely absent from the mainstream media. This sidelining of national minorities is also reflected in the continued lack of visibility of their history, cultural heritage and languages in school curricula and textbooks (see further below, Article 12). Moreover, discrimination against “Others”, including persons belonging to national minorities, as regards access to political posts is not only a reflection of the lack of weight given to them in the construction of the State: it also means that they are not in a position to significantly influence debates or to bring pressure to bear themselves to improve the situation of persons who do not belong to one of the constituent peoples in Bosnian society (see further below, Article 15).

92. The Advisory Committee also notes that religious education in schools is treated as part of the “national” group of subjects and is thus closely associated with ethnic belonging. Moreover, although religious education is theoretically optional, only Sarajevo Canton provides an alternative course (“Culture of religion”), and children who opt out of religious education are in most cases simply left without supervision. This creates strong pressure on parents to enrol their children in the religious education classes associated with the relevant “national” group of subjects, regardless of their religious beliefs. The Advisory Committee also notes with concern that the decision of Sarajevo Canton – aimed at preventing discrimination against pupils who do not follow religious education – to provide that marks received by students for religious education would not count towards their average grade was surrounded by public controversy. The Advisory Committee is concerned that this situation, in which religion is conflated with ethnic affiliation and instrumentalised in public debates, again serves to perpetuate divisions in Bosnian society. It is moreover deeply concerned that children are the primary victims of this state of affairs.

93. The Advisory Committee is also concerned that the independence of the Communications Regulatory Agency has been threatened by proposals to introduce ethnic and political appointments criteria.³² It stresses the importance of ensuring that the broadcast regulator is independent and impartial and that complaints systems are fair and accessible to all citizens.

Recommendations

94. The Advisory Committee strongly urges the authorities at all levels to take resolute measures to promote intercultural dialogue and mutual understanding between the different ethnic and religious groups in Bosnia and Herzegovina. It invites them in particular to condemn all manifestations of intolerance and ethnically motivated hostility in the political sphere and actively to promote a sense of belonging to a shared country, in line with the spirit of promoting mutual respect, tolerance and understanding amongst all persons living on the territory of the State that is central to the provisions of the Framework Convention.

95. It also urges the authorities to ensure that the manner in which religion is taught in schools does not serve to perpetuate divisions in Bosnian society.

³² OSCE Press Release, “International Community Insists on Independence of Bosnia and Herzegovina’s Broadcast Regulator”, 23 December 2009.

96. The Advisory Committee again invites the authorities to ensure that the public has easy access to media supervisory bodies and complaints systems and that the Communications Regulatory Agency remains in a position to continue its independent monitoring of the media.

Return process and hostility directed against minority returnees

Recommendations from the two previous cycles of monitoring

97. In its previous monitoring cycles, the Advisory Committee urged the authorities to combat all forms of hostility directed at minority returnees, to undertake systematic monitoring of hate crimes and ensure that the police were adequately trained in this field.

Present situation

98. The Advisory Committee welcomes the fact that the process of returns of property to persons displaced by the war, carried out under Annex 7 to the Dayton Agreement, is largely completed. However, it observes that the return of property has not been accompanied by a concomitant number of returns of people, as many of those who recovered property under Annex 7 have never returned to live permanently in it. Moreover, while there have been a series of welcome developments towards the removal of ethnically exclusive flags and coats of arms,³³ the Advisory Committee regrets that such symbols are still instrumentalised to send a message of exclusion and that the intervention of the courts has frequently been necessary to achieve change in practice. Strong nationalist rhetoric of politicians as well as ethnic discrimination in access to the labour market and access to other social rights also continue to act as barriers to returns of people, and the passage of time makes returns increasingly unlikely.³⁴

99. The Advisory Committee notes that reports of ethnically motivated violence against returnees have diminished in the past few years. Nonetheless, there have been numerous attacks against religious properties and sites, mostly targeting mosques, Catholic and Serbian Orthodox churches and cemeteries (i.e. religious sites closely associated with the respective constituent peoples). Persons belonging to the constituent peoples thus continue to be targeted by hate-motivated attacks, in particular where they are in a minority situation. Other racist and xenophobic incidents also continue to be reported.³⁵ Despite the fact that a number of institutions are reportedly engaged in collecting figures on hate-motivated crimes, it also appears that there is still no systematic monitoring of such offences in Bosnia and Herzegovina³⁶ and racist motivations are not expressly recognised as an aggravating circumstance in the Criminal

³³ See most recently a judgment of the Supreme Court of the Republika Srpska in February 2013 declaring unconstitutional the flags and coats of arms of Banja Luka and Nevesinje on the grounds that the symbols they use represent only the national and religious identity of Serbs. This judgment can be seen as part of a line of similar case-law including in particular the judgments of the Constitutional Court of Bosnia and Herzegovina of 27 February 2004, concerning the names of some municipalities as stipulated by laws enacted in the Republika Srpska, and of 31 March 2006, concerning the laws on national symbols in force in the two Entities.

³⁴ See further United Nations General Assembly, Human Rights Council, Report of the Independent Expert on minority issues, Rita Izsák, Addendum: Mission to Bosnia and Herzegovina, 31 December 2012, A/HRC/22/49/Add.1.

³⁵ See OSCE Hate Crimes Report 2011, pp46, 56, 61, 68 and 74-75 on occurrences of specific forms of hate crimes.

³⁶ The authorities of Bosnia and Herzegovina have indicated to the OSCE that figures on hate crimes were collected in 2011 by the Interior Ministry, law enforcement agencies/the police, the Intelligence Agency, the Prosecutor's Office, the Ministry of Justice and the Statistical Office. However, they did not provide any specific figures to the OSCE. See OSCE Hate Crimes Report 2011, p101 on the authorities that collect statistics on hate crimes; the figures on specific hate crimes provided on pp46, 56, 61, 68 and 74-75 were all provided by the OSCE or civil society actors.

Code.³⁷ Moreover, low numbers of complaints of hate crimes by Roma (three reported to the OSCE in 2011) may in part be due to lack of trust in the police, as police abuse of Roma is reportedly not uncommon.

Recommendations

100. The Advisory Committee urges the authorities to intensify their efforts to combat all forms of hostility directed at minority groups, whether these are minority returnees, constituent people in a minority situation more generally or persons belonging to national minorities.

101. It also calls on the authorities to strengthen their efforts to monitor hate crimes systematically. A unified method of recording complaints, accusations and convictions for hate crimes should be established and the police need to be trained to identify all forms of hate crimes and record them accurately. Racist motivations should also be expressly recognised as aggravating circumstances in the Criminal Code.

Article 9 of the Framework Convention

Application of the State Law on National Minorities in the field of the media

Recommendations from the two previous cycles of monitoring

102. In its previous monitoring cycles, the Advisory Committee recommended that the authorities take measures to ensure that public radio and television stations fulfilled their obligations regarding the broadcasting of programmes for national minorities and seek means of enabling effective access to the media for persons belonging to national minorities.

Present situation

103. It remains the case that persons belonging to national minorities are entitled to establish radio and television stations and to publish newspapers and other written media in their own languages,³⁸ and that public broadcasters are required to include specific programmes for national minorities in their programming schedules.³⁹ The authorities have also indicated that legislation has also been in place since 2009 to provide for the setting up of a radio station intended, *inter alia* for persons belonging to national minorities. CRA (Communications Regulatory Agency) Rule 58/2011 now regulates in detail the issuing of permits for non-profit radio stations, which may be of relevance to national minorities. The Advisory Committee also notes with interest that in accordance with CRA Rule 57/2011 on public radio and television stations, local public stations are required to devote 10% of the total weekly time slots set aside in their broadcasting schedules for news and other information and educational programmes to addressing matters relating to persons belonging to national minorities.

104. The Advisory Committee notes with regret, however, that these provisions continue to have little impact in practice, and observes that closer monitoring by the Communications Regulatory Agency of their implementation may be needed. The Advisory Committee also regrets that the possibility of setting up a radio station intended for persons belonging to national minorities has still not been taken up and that little programming is devoted to national minorities, whether in minority or majority languages. The Radio and Television of the

³⁷ See further in this respect ECRI, Report on Bosnia and Herzegovina (fourth monitoring cycle), 8 February 2011, CRI(2011)2, paragraphs 14-17.

³⁸ Article 15 of the State Law on National Minorities.

³⁹ Article 16 of the State Law on National Minorities.

Federation reported making a series of 17 half-hour documentaries in 2011 on the origins, traditions, cultures, activities and future prospects of national minorities in Bosnia and Herzegovina (one programme per national minority).⁴⁰ According to the information provided to the Advisory Committee, it also broadcast ten news items (each) on Roma and Jews each year from 2007 to 2010, and seven news items (each) on Roma and Jews in 2011. The situation within the ten cantons of the Federation varies from one canton to another, with Sarajevo Canton indicating for example that there is no public programming in the languages of national minorities, but that national minorities are present in broadcasts such as talk shows; in Tuzla Canton, a weekly programme in Romani was forced to close for lack of translators, but footage from minority events is reportedly broadcast regularly. In the Republika Srpska, a variety of television programmes have touched on the situation of national minorities, their cultures, music and history, and a fortnightly, 50-minute programme addressing issues related to national minorities airs on the Republika Srpska Radio.⁴¹ The State Television of Bosnia and Herzegovina has indicated that it frequently broadcasts documentaries on national minorities, and a private television network, with the support of the Ministry of Human Rights and Refugees, made a documentary on Roma housing.⁴²

105. The Advisory Committee observes that while these efforts are commendable, they remain sporadic; with the exception of the *Korijeni* fortnightly radio programme in the Republika Srpska, there appears to be little effort to maintain a regular presence of national minorities in the public media. A number of the representatives of national minorities that the Advisory Committee met during its visit emphasised the lack of broadcasting in minority languages, and referred to the low level of interest of State and Entity level broadcasters in programming related to national minorities. The lack of public broadcasting in minority languages is considered a problem particularly for children, as well as for the visibility of the languages themselves. This is exacerbated by the lack of teaching in and of minority languages (see below, Article 14).

106. The Advisory Committee recalls that for public service broadcasting to reflect the cultural and linguistic diversity existing within society and the experiences of minorities themselves, it must guarantee an adequate presence of persons belonging to national minorities and their languages, including numerically smaller groups. This means that adequate support needs to be granted to the media and programmes for, by, and about national minorities in minority and majority languages, as well as in bilingual or multilingual formats. Particular attention also needs to be paid to overcoming difficulties experienced by numerically smaller or especially vulnerable minorities, for example due to a lack of journalists trained to work in the relevant languages.⁴³

Recommendations

107. The Advisory Committee calls on the authorities to step up their efforts to ensure that public radio and television stations fulfil their legal obligations regarding the inclusion of specific programmes for national minorities in their programming schedules. They should

⁴⁰ See European Charter for Regional or Minority Languages, Initial periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter, Bosnia and Herzegovina, 30 July 2012, MIN-LANG/PR (2012) 5, §120.

⁴¹ Ibid, §§118-119, and see the website of the *Korijeni* radio programme; the latter aired weekly from April 2006 to end 2010 and has been broadcast fortnightly on Saturday mornings since 2011.

⁴² Ibid, §§121-122.

⁴³ See §§41-44 of the Advisory Committee's Third Thematic Commentary on the Language Rights of Persons Belonging to National Minorities, adopted on 24 May 2012, ACFC/44DOC(2012)001 rev.

furthermore take determined measures to stimulate broadcasting in minority languages. It also underlines the need for the Communications Regulatory Agency to pay increased attention to the application of the legislation in this sphere.

108. The Advisory Committee strongly encourages the authorities to step up their efforts, including through exploring the possibilities of enhanced access to vocational training in this field, to ensure that persons belonging to national minorities have effective access to the media.

Article 10 of the Framework Convention

Use of minority languages

Recommendations from the two previous cycles of monitoring

109. In its previous monitoring cycles, the Advisory Committee encouraged the authorities to evaluate, in consultation with representatives of national minorities, needs and demand for the use of minority languages in relations with the administrative authorities, and, where possible, to apply the more flexible provisions of Entity legislation on thresholds in this field.

Present situation

110. The Advisory Committee welcomes the ratification by Bosnia and Herzegovina of the European Charter for Regional or Minority Languages in September 2010. It understands, however, that there has been no change to the legislation in force in this field since its Second Opinion in 2008.⁴⁴ Thus, the State Law on National Minorities still obliges the authorities of a municipality where national minorities constitute an absolute or relative majority of the local population to provide for the use of the national minority language between persons belonging to the national minority and the authorities; where this condition is not fulfilled, the State Law requires that a minimum threshold of one-third of the local population be composed of persons belonging to national minorities before municipalities can decide to permit the use of minority languages in relations with the administrative authorities.⁴⁵ A more flexible approach is taken in the Entity laws, which do not impose a minimum threshold that must be fulfilled before municipalities in areas traditionally inhabited by national minorities can decide to allow the use of minority languages in relations with the administrative authorities.⁴⁶ However, this has not led to any cases in practice where municipalities have taken steps to allow for the use of minority languages. The State authorities have indicated that no minorities have requested to use their languages in contacts with municipal or administrative authorities and that in the absence of a census since 1991, no municipalities have been identified where this right could in fact be exercised in accordance with the State Law.

111. The Advisory Committee notes that the forthcoming census could provide valuable information about the numbers of persons belonging to national minorities living in specific municipalities. Nonetheless, it emphasises that in areas traditionally inhabited by national minorities, needs and demand in this field could be assessed independently and without waiting for the results of the next census, in order to allow appropriate provision to be made for the use of national minority languages in these areas, irrespective of the proportion of the population

⁴⁴ The Advisory Committee notes in this context that at the time of adopting this Opinion, the Committee of Experts of the European Charter for Regional or Minority Languages was in the process of drawing up its first Report on Bosnia and Herzegovina.

⁴⁵ See Article 12 of the State Law.

⁴⁶ See Article 9 of the Law of the Republika Srpska and Article 9 of the Law of the Federation.

that is composed of persons belonging to national minorities as measured in currently available (outdated) official figures.⁴⁷

Recommendation

112. The Advisory Committee recommends that the authorities consult representatives of national minorities in the areas where they are traditionally settled so as to evaluate needs and demand regarding the use of minority languages in relations with the administrative authorities. Where such a need and demand exists, it encourages the relevant authorities to use the provisions of the Republika Srpska and Federation legislation to the fullest extent possible to allow for the use of national minority languages with the administrative authorities.

Article 11 of the Framework Convention

Topographical information in minority languages

Recommendations from the two previous cycles of monitoring

113. In its previous monitoring cycles, the Advisory Committee encouraged the authorities to assess, in consultation with representatives of national minorities, needs and demand for the display of topographical indications and other signs in minority languages, and, where possible, to apply the more flexible provisions of Entity legislation on thresholds in this field.

Present situation

114. The Advisory Committee notes that the requirements and possibilities described above with respect to the use of minority languages in contacts with the administrative authorities also apply to the display of topographical information in minority languages. As above, the authorities have indicated that no national minority meets the requirements set out in the State Law on National Minorities and that no national minorities have requested to benefit from the relevant Entity provisions.

115. The Advisory Committee welcomes reports received from other sources that in this field, practice is more positive than the strict legal requirements of the State Law on National Minorities might suggest. Thus, in the Prnjavor region of the Republika Srpska – a region traditionally inhabited by a high proportion of persons belonging to national minorities – representatives of national minorities reported that two villages display topographical signs in minority languages.

116. The Advisory Committee considers that more should be done to assess the needs and demand of persons belonging to national minorities regarding the display of topographical and other information signs in minority languages in areas traditionally inhabited in substantial numbers by persons belonging to national minorities. It notes that it should not be necessary to wait for the results of the next census before conducting such an assessment in the relevant areas. It emphasises that such practices of engaging with national minorities on the issue of signs not only enhance the visibility of national minorities but also promote a positive image of diversity in areas inhabited by various population groups. Both of these points have particular importance in the context of Bosnia and Herzegovina.

⁴⁷ See §§55-58 of the Advisory Committee's Third Thematic Commentary on the Language Rights of Persons Belonging to National Minorities, adopted on 24 May 2012, ACFC/44DOC(2012)001 rev.

Recommendation

117. The Advisory Committee recommends that the authorities consult representatives of national minorities in the areas where they are traditionally settled in substantial numbers so as to evaluate needs and demand regarding the display of topographical indications and other signs in minority languages. Where such a need and demand exists, it encourages the relevant authorities to use the provisions of the Republika Srpska and Federation legislation to the fullest extent possible to allow for the display of such indications and signs in minority languages.

Article 12 of the Framework Convention

Segregation in the school system

Recommendations from the two previous cycles of monitoring

118. In its previous monitoring cycles, the Advisory Committee has urged the authorities of the Entities and cantons to take far more determined measures to end segregation of pupils according to their national or ethnic origin, to promote multi-ethnic education and to impose more widespread application of the common core curricula.

Present situation

119. The Advisory Committee notes with interest that on 27 April 2012 the Mostar Municipal Court found that the “two schools under one roof” system constituted segregation on ethnic lines and was in breach of the antidiscrimination law. However, it has been reported that a similar case filed in Travnik was dismissed, on the grounds that there had been no complaints from parents and that no child had ever been refused enrolment on a discriminatory basis. Both cases are now being appealed. These cases illustrate the profound divisions that still exist around the issue of educating together children belonging to different constituent peoples.

120. The Advisory Committee is deeply concerned at the slow pace of progress in eliminating the “two schools under one roof” system. It is also concerned at reports that the number of mono-ethnic schools is increasing, even in areas where the population has remained more mixed. It welcomes the news that in August 2012 the coordinating body of Ministers of Education of the Federation (involving several, although unfortunately not all, of the cantonal Ministers of Education) adopted a set of Recommendations for the Elimination of Segregating and Parallel Structures in Educational Institutions in the Federation of Bosnia and Herzegovina. It hopes that the adoption of these recommendations will accelerate the process of eliminating segregation in education in Bosnia and Herzegovina (both in the form of “two schools under one roof” and in the form of mono-ethnic schools) and stresses the importance of moving ahead with this process rapidly.

121. The Advisory Committee emphasises in this context that work also needs to continue on the further development of the common core curriculum in Bosnia and Herzegovina: not only does the existing common core curriculum need to be applied throughout the country, but the continued existence of separate “national” subjects of history and geography and religion, which are taught differently to pupils according to whether they follow the Bosniac, Croat or Serb “national” group of subjects, is detrimental to the dialogue and interaction of all children. An inclusive approach to the teaching of history and geography – taking a multi-dimensional perspective that also takes account of the history of national minorities in Bosnia and Herzegovina – would be far preferable as a means to facilitate contacts between students of different communities, as required by Article 12, paragraph 2 of the Framework Convention.

122. The Advisory Committee observes that segregation in education is as a matter of principle unacceptable.⁴⁸ Although the reasons for the introduction of the “two schools under one roof” system are well known and understandable in the immediate post-war context of Bosnia and Herzegovina, the maintenance of this practice in the long term is indefensible. The Advisory Committee stresses that ethnic segregation in education is a breach of the human rights of the children concerned by it, that it runs counter to the development of the spirit of tolerance, mutual understanding and co-operation that is central to the Framework Convention (see also above, under Article 6) and that concerns about preserving language and culture can very well be met within the framework of integrated education. Practice in the Brčko District has moreover shown that integrated teaching is absolutely possible in Bosnia and Herzegovina, provided that the political will exists to make it work.

Recommendations

123. The Advisory Committee strongly urges the authorities at all levels to take as a matter of priority all necessary steps to eliminate segregation in education. This means in particular accelerating the work to abolish all remaining cases of “two schools under one roof” and replace them with integrated education, as well as working to avoid the development of mono-ethnic schools in areas inhabited by a mixed population. It emphasises in this context that the existence of separate “national” groups of subjects does not justify maintaining separate schools and encourages the authorities to draw on the experiences of the Brčko District and other areas where integrated education is in place to help develop successful models in the schools under their jurisdiction.

124. The Advisory Committee also strongly recommends that the authorities take more resolute measures to ensure that the existing common core curriculum is applied in every school in Bosnia and Herzegovina, and to introduce inclusive and multi-perspective teaching of history, geography and religion. The subjects covered by the common core curriculum should be extended to include history, geography and religion.

Teacher training and teaching about national minorities in schools

Recommendations from the two previous cycles of monitoring

125. In previous monitoring cycles, the Advisory Committee called on the authorities to make the history, culture and languages of the national minorities a component part of school syllabuses and to train teachers to impart knowledge of these subjects. It also pointed to the need to give greater support to developing the necessary textbooks and teaching materials.

Present situation

126. The Advisory Committee notes with interest that a manual on national minorities for use in schools, “Let’s get to know each other”, has been developed in recent years with the support of the OSCE and the participation of representatives of national minorities’ associations, the

⁴⁸ See notably in this context the Advisory Committee’s Commentary n° 1, Education under the Framework Convention for the Protection of National Minorities, adopted on 2 March 2006, Part 2.1.2 – Main Issues – Promotion of multicultural and intercultural elements in education, and Equal opportunities for access to education – b) Access to education for Roma; see furthermore the judgments of the European Court of Human Rights in the cases of *D.H. and others v. the Czech Republic*, application no. 57325/00, judgment of 13 November 2007 (Grand Chamber), *Sampanis and others v. Greece*, application no. 32526/05, judgment of 5 June 2008, final on 5 September 2008, and *Oršuš and others v. Croatia*, application no. 15766/03, judgment of 16 March 2010 (Grand Chamber), as well as OSCE High Commissioner on National Minorities, Ljubljana Guidelines on Integration of Diverse Societies, The Hague, November 2012, paragraphs 44 and 45 and relevant explanatory notes.

Ministry for Human Rights and Refugees and Pedagogical Institutes from various levels of government in Bosnia and Herzegovina.⁴⁹ At the same time, it notes that uptake of the manual in schools has so far been relatively limited and that some representatives of national minorities consider that the manual does not go far enough beyond clichés about folklore, costumes or cooking. The OSCE also sponsored the “Kaleidoscope” programme, a country-wide project to assist both teachers and pupils in learning about the culture, heritage, origins and traditions of the national minorities in Bosnia and Herzegovina and promote cross-cultural understanding, which was positively received by representatives of national minorities.

127. The Advisory Committee notes that initiatives such as these are sorely needed to overcome the current situation, in which national minorities in Bosnia and Herzegovina are virtually invisible. It regrets that stimulation from the international community has been necessary to get them off the ground and stresses that the authorities at all levels should be taking a proactive approach in raising awareness through school curricula about the history, culture and identity of national minorities.

128. It moreover notes with concern the lack of appropriate textbooks, teaching materials, qualified teachers and available premises, which hampers the efforts of national minorities to promote the teaching of national minority languages and leaves them largely dependent on the support of their kin-States in this field (see further below, Articles 14 and 17). Such efforts should be institutionalised in the education system at all levels of education, including teacher training.

Recommendations

129. The Advisory Committee urges the authorities to further develop measures and programmes designed to foster a better awareness of national minorities among pupils and the general public, building on the initiatives already taken towards strengthening teaching about national minorities in schools. These long-term efforts should in particular serve to make the history, culture and languages of national minorities a component part of school syllabuses and to train teachers to teach these subjects.

130. The Advisory Committee also invites the authorities to provide increased and more active support to the development of school textbooks and other materials designed specifically for the teaching of minority languages.

Roma in the education system

Recommendations from the two previous cycles of monitoring

131. In its previous monitoring cycles, the Advisory Committee invited the authorities to ensure the systematic implementation of the Action Plan on the Educational Needs of Roma and Other National Minorities, notably through allocating adequate funding and regularly monitoring and evaluating the measures taken. It also emphasised that the state authorities should assume in full their role as coordinator of the implementation of this Action Plan.

Present situation

132. Roma children continue to experience considerable marginalisation and social exclusion, which limit their effective enjoyment of the right to education. The Advisory

⁴⁹ Leonard Valenta, Let's get to know each other: National minorities in Bosnia and Herzegovina (*Upoznajmo se! Nacionalne manjine u Bosni i Hercegovini*), OSCE, 2009, available at: http://www.oscebih.org/documents/osce_bih_doc_2011022813425011eng.pdf

Committee observes that specific measures are needed to break this cycle and achieve equality in practice. It welcomes the authorities' recognition of the need to take such measures and notes in this context that the Action Plan on the Educational Needs of Roma and Other National Minorities was revised when Bosnia and Herzegovina joined the Roma Decade in 2010. An expert team was set up under the auspices of the Ministry for Human Rights and Refugees to monitor the implementation of the Action Plan. As of May 2012 this team was reported to have developed its data collection methodology and to be finalising its first monitoring report. The Advisory Committee welcomes these steps to introduce improved monitoring and evaluation of the implementation of the Action Plan.

133. The Advisory Committee notes with interest that many positive measures are already in place to improve Roma children's access to school, such as the grant of free textbooks and facilitated access to school buses. However, these measures are not in place throughout the territory of Bosnia and Herzegovina and the Advisory Committee has received numerous reports that where they are in place, these measures do not always reach Roma children in practice. Moreover, for families living in extreme poverty, the cost of other school materials such as exercise books, pens and pencils and of adequate clothing remains prohibitive. These expenses are not covered by the measures in place, which therefore are of little benefit to their intended beneficiaries.

134. Some welcome examples of the involvement of Roma mediators and assistants in work to improve Roma children's access to education were described to the Advisory Committee during its visit, notably in Sarajevo, Tuzla and the Brčko District. However, such measures remain scattered and insufficient. The Advisory Committee notes that where such measures have proved successful, it is thanks to the development of strong links with Roma parents and schools and to taking a holistic approach that includes, for example, reaching out to children at pre-school age to prepare them for school and providing a suitable space for children to study; much also depends on the individual dedication and engagement of the persons working as mediators and assistants and the extent to which they are trusted by the Roma communities with which they work.

135. The Advisory Committee is deeply concerned that, despite the efforts described above, Roma continue to face persistent inequalities with regard to access to education throughout the country. Attendance rates of Roma children in schools remain low and dropout rates high, with few Roma pursuing their education through secondary school and even fewer to higher education. Adolescent Roma girls have particularly high dropout rates and the level of illiteracy amongst Roma adults remains high, especially among older women. Poverty, geographical isolation, social exclusion, discrimination, prejudice and hostility in schools all fuel these phenomena, and the fact that many Roma parents have not completed primary education themselves and have low levels of literacy makes it all the more difficult to engage them in overcoming these problems when it comes to their children's schooling.⁵⁰ Furthermore, children who lack identity documents (see above, comments under Article 4) may reportedly be prevented from enrolling for school because, in the eyes of the relevant laws, they have no legal existence. The Advisory Committee stresses the importance of overcoming such problems rapidly in order to ensure that a lack of identity documents does not deprive children of access to education.

⁵⁰ See for example Millenium Development Goals Achievement Fund, Non-Enrolment and School Dropout: A study based on children and youths who do not enrol in or drop out of primary and secondary education, December 2011.

Recommendations

136. The Advisory Committee urges the authorities at all levels to ensure that the Action Plan on the Educational Needs of Roma and Other National Minorities is adequately funded and fully implemented. It encourages the authorities in their efforts to improve the monitoring and evaluation of the implementation of the Action Plan. It also encourages them to feed the results of this monitoring and evaluation into the development and strengthening of good practices in this field.

137. The Advisory Committee strongly recommends that, as part of the measures taken to ensure equal access to education for Roma children, the authorities ensure that Roma children are not prevented from enrolling for school because they lack identity papers; in such cases the authorities should rather facilitate access to the necessary documents and assist parents to enrol their children in school.

138. The Advisory Committee encourages the authorities to develop further the practice of employing Roma mediators or assistants to help strengthen the links between Roma families and schools and ensure that Roma children not only enrol in school but are also able to follow their schooling through to completion. It emphasises the importance of learning from both successful and unsuccessful experiences in this field in order to build trust and create sustainable results.

139. The Advisory Committee further recommends that the authorities take measures to tackle the problem of adult illiteracy among the Roma, notably by facilitating the access of Roma to adult education.

Article 14 of the Framework Convention

Teaching in and of minority languages

Recommendations from the two previous cycles of monitoring

140. In its previous monitoring cycles, the Advisory Committee invited the authorities to take more resolute steps to develop teaching in and of minority languages in areas where persons belonging to national minorities are settled traditionally or in substantial numbers and to make a proper assessment of the needs and demands of persons belonging to national minorities in this field.

Present situation

141. The requirements established by law for teaching in and of minority languages have not changed since the Advisory Committee's Second Opinion. Thus, under the State Law on National Minorities as amended in 2005, pupils belonging to a national minority must form one-third of the population of the school concerned for the school to be obliged to provide teaching in the minority language. The Federation Law reflects these criteria; the law of the Republika Srpska has not yet been aligned with these amended requirements and still includes the previous, more stringent requirement that the minority constitute an absolute or relative majority of the municipality concerned in order for children to be entitled to receive instruction in their minority language. In practice, however, neither the less stringent requirement introduced in the Federation Law to align it with the amended State Law nor *a fortiori* the stricter requirement retained in the Republika Srpska Law are met anywhere, and currently no public schools in Bosnia and Herzegovina make provision for teaching in the language of a national minority. The

ratification by Bosnia and Herzegovina of the European Charter for Regional or Minority Languages in September 2010 has not altered this situation.⁵¹

142. As regards the teaching of minority languages, under the State Law as amended in 2005 and the Federation Law, pupils belonging to national minorities must constitute one-fifth of the population of the school for there to be an obligation, upon the request of the majority of their parents, to provide additional classes on the language, literature, history and culture of the minority. In the Republika Srpska, irrespective of the number of pupils belonging to national minorities in any given municipality, there is an obligation to provide such additional classes if the parents of pupils belonging to national minorities so demand, in accordance with the general laws on education. The Advisory Committee has been informed that very few schools in Bosnia and Herzegovina provide such optional classes and there continue to be very few possibilities for studying the Romani language in schools. In the Republika Srpska, Ukrainian and Italian are taught as optional classes in a small number of schools. In most other cases, it appears that teaching of minority languages continues to occur outside the school environment. In Tuzla, for example, the authorities have indicated that no requests for the teaching of minority languages in schools have been received, but that Hungarian, Italian and Slovenian are taught in the minorities' own language schools, which receive support partly from the municipal and cantonal budgets and partly from the relevant embassies. Polish and Czech minority associations in the Federation also deliver language classes with the support of the authorities of their kin-States.⁵²

143. The Advisory Committee is concerned that the authorities have not taken a pro-active approach in this field. In this respect it is regrettable that the Joint Committee for Human Rights of the Parliament of Bosnia and Herzegovina has never approved the publication of a report compiled by the State Council of National Minorities over the period 2004-2009 on the implementation of education rights under the State Law on National Minorities. Initiatives for providing teaching of minority languages continue to come mostly from national minorities themselves. As mentioned above (see Article 12), these efforts remain largely dependent on support from their kin-States.

144. In discussions with the Advisory Committee during its visit to Bosnia and Herzegovina, representatives of national minorities consistently voiced disappointment in this situation and expressed the need for more active support from the authorities in this field. The Advisory Committee emphasises that the current situation, in which the language, history and culture of national minorities are virtually absent from school curricula (see also above, Article 12), not only constitutes a threat to the preservation of the individual identity of persons belonging to national minorities but also aggravates their position of virtual invisibility in the context of Bosnia and Herzegovina. It moreover stresses that a purely passive approach on the part of the authorities – simply waiting for national minorities to express a clear demand – is not an adequate means of protecting the rights of persons belonging to national minorities: the authorities should regularly monitor the demand for teaching in and of minority languages and should stimulate such demand through awareness-raising among parents and pupils.⁵³

⁵¹ As noted above, at the time of adoption of this Opinion, the Committee of Experts of the European Charter for Regional or Minority Languages was in the process of drawing up its first Report on Bosnia and Herzegovina.

⁵² See the Advisory Committee's Commentary n° 1, Education under the Framework Convention for the Protection of National Minorities, adopted on 2 March 2006, Part 2.1.2 – Main Issues – Teacher training, access to textbooks and multicultural contacts, on the need for prudence in using kin-State support in the field of education.

⁵³ See notably §§71-72 of the Advisory Committee's Thematic Commentary n° 3 on the Language Rights of Persons Belonging to National Minorities, ACFC/44DOC(2012)001 rev.

Recommendation

145. The Advisory Committee calls on the authorities to step up their efforts to develop teaching in and of minority languages in areas where persons belonging to national minorities are settled traditionally or in substantial numbers. The authorities at all levels should take a proactive approach in this field. The needs and demand of persons belonging to national minorities for such teaching should be duly assessed.

Article 15 of the Framework Convention

Participation in public affairs

Recommendations from the two previous cycles of monitoring

146. In its previous monitoring cycles, the Advisory Committee urged the authorities to take all the necessary measures, including at legislative level, to provide persons belonging to national minorities with real and effective possibilities of representation in municipal councils and assemblies. In particular, it invited them to ensure that these positive measures were not abused by persons or groups who did not represent persons belonging to national minorities.

147. It also noted that it was essential that national minority representatives should in the future be fully involved in any discussion on matters of public interest, notably in the context of the reform of the Constitution and the functioning of the country's institutions. It emphasized that particular attention should be paid to improving participation of the Roma in public affairs.

Present situation

148. The Advisory Committee notes that the legislation governing minority representation in municipal councils and assemblies has not changed since the Electoral Law was amended in April 2008. Thus, national minorities are entitled to representation in municipal and city councils and assemblies in proportion to their percentage of the population as measured in the last (1991) census, with a reserved seat guaranteed by law if they constitute at least 3% of the local population. Municipal and city assemblies and councils could, in addition, decide to allocate seats to national minorities even where they constituted less than 3% of the local population, and were obliged to determine before the 2008 elections the precise numbers of representatives of national minorities to be assigned seats. The Advisory Committee notes with interest the election under these rules of 35 national minority representatives⁵⁴ from a total pool of 106 candidates in the 2008 local elections, in 14 municipalities in the Republika Srpska and 17 in the Federation of Bosnia and Herzegovina (two of the latter having two minority representatives each), as well as in the Brčko District (also having two minority representatives). In two municipalities where there could have been one representative of a national minority, there were no candidates for the relevant seats.

149. The Advisory Committee has not been able to access a detailed breakdown of the minority representatives elected in the 2012 local elections. However, it notes that only 29 minority representatives were elected in these elections – a significant drop compared with the previous local elections in 2008. It considers that the causes of this drop should be analysed, in close consultation with persons belonging to national minorities, with a view to overcoming any difficulties identified before the next local elections in four years' time.

⁵⁴ 13 Roma, 7 Montenegrins, 4 Albanians, 3 Ukrainians, 2 Macedonians, 2 Slovenians, 1 Czech, 1 Italian, 1 Romanian and 1 Turk. There were 27 men elected and 8 women.

150. The Advisory Committee also notes that by law, the numbers of reserved seats for national minority representatives will need to be recalculated following the next census so as to reflect more accurately the current composition of the population in Bosnia and Herzegovina.

151. The Advisory Committee has again received reports that some political parties have taken advantage of two factors in particular – first, that candidates of national minorities require fewer signatures for their candidacy to be validated than do others, and second, that nothing prevents an individual from changing their declared ethnic affiliation from one election to the next – in order to include candidates on their lists who claim to belong to a national minority (and may thus be elected to seats reserved for national minorities) but are not recognised as such by national minorities themselves. While acknowledging the principle of free self-identification laid down in Article 3 of the Framework Convention, the Advisory Committee is concerned at the abuse of this system, which was intended to promote the effective participation of national minorities at local level.

152. As underlined above (see Article 4), persons belonging to national minorities have been to all intents and purposes left out of discussions on how to ensure that they are not automatically excluded from running for certain high political offices at the level of the State. For the Advisory Committee, this is symptomatic of the lack of regard given to the situation of persons belonging to national minorities by many of the mainstream political parties in Bosnia and Herzegovina. Decisive action from political leaders themselves will be required to turn this around.

Recommendations

153. The Advisory Committee calls on the authorities to take resolute measures to ensure that the possibilities of representation in municipal councils and assemblies that are laid down by law for persons belonging to national minorities are real and effective in practice. To this end, the authorities should review the criteria for inclusion of national minority representatives on party lists, so as to prevent abuse of the system by candidates who do not represent national minorities. They should also review the 3% threshold for guaranteed reserved seats, taking account of the results of the next census when they become available.

154. The Advisory Committee invites the authorities, in close consultation with representatives of national minorities, to study the factors underlying the drop in the number of minority representatives elected in the 2012 local elections, with a view to remedying any problems identified in time for the next local elections in 2016.

155. The Advisory Committee urges the authorities to ensure that national minorities are able to participate effectively in work on revising the State Constitution, and refers to its recommendations above (Article 4) in this respect.

The Councils of National Minorities

Recommendations from the two previous cycles of monitoring

156. In previous monitoring cycles, the Advisory Committee recommended that the authorities complete the appointment of members of the newly elected state-level Council of National Minorities and take all the necessary measures, including the allocation of financial and human resources, so that the Council of National Minorities could play its role effectively. It also invited the authorities to ensure that the process of appointing council members to the Council of the Federation was conducted in a transparent manner and that clear, precise rules of procedure were established.

157. The Advisory Committee further invited the authorities to increase the financial and human resources at the disposal of the Roma Board, so as to enable it to carry out effective co-ordination and monitoring of the implementation of the Action Plans for Roma in the fields of education, employment, health care and housing.

Present situation

158. The Advisory Committee welcomes the fact that Councils of National Minorities have now been established in both Entities as well as at State level and have been operational for several years. It also welcomes the establishment of Councils of National Minorities in Sarajevo and Tuzla Cantons, in line with their cantonal legislation on national minorities.

159. However, some problems have been reported as to the composition of the Councils and their capacity to influence the affairs of national minorities. At State level, the role of the Parliament's Joint Committee for Human Rights in electing members if there is more than one candidate on behalf of a given national minority has politicised appointments and seriously damaged the confidence of national minorities in the capacity of the Council to work effectively to represent the interests of national minorities. In the Federation, the high number of members of the Council provided for by law⁵⁵ has also created difficulties for the work of the Council of National Minorities of the Federation. These difficulties are compounded in both cases by the lack of interest displayed by their parliamentary interlocutors in the effective functioning of the Councils and in the proposals that they put forward. As such, the Councils' influence on the affairs of national minorities remains very limited in practice. The Advisory Committee nonetheless notes with interest that the Council of National Minorities of the Republika Srpska has been increasingly active in recent years, seeking to improve contacts also between national minorities and the executive.

160. As regards the Roma Board, this functions as an advisory body to the Council of Ministers at State level and is composed of equal numbers of representatives of Roma and of the government. It is tasked with advising and coordinating work on Roma issues within the Ministry for Human Rights and Refugees and with monitoring the implementation of strategies and action plans in this field. The Advisory Committee notes with interest that the Roma Board was able to make proposals for the measures to be included in the various Action Plans for Roma developed by the Council of Ministers and that its funding was 75 000 BAM (approximately 38 000 EUR) in 2011, up from 50 000 BAM (approximately 25 000 EUR) in 2007. It is however concerned at reports that procedures for appointing the representatives of Roma lack transparency, do not always favour the appointment of the most qualified candidates and do not serve to ensure effective representation of the interests of Roma.

Recommendations

161. The Advisory Committee strongly recommends that the authorities amend the provisions governing the membership of the State Council of National Minorities in order to depoliticise appointments and ensure that the members of the Council are genuinely representative of national minorities. It also recommends that the provisions governing the membership of the Federation Council be reviewed to ensure that the Council is manageable in size while remaining duly representative.

⁵⁵ The Federation Law provides for there to be one representative on the Council of National Minorities for every thousand persons (or part thereof) belonging to the national minority, with a cap at five representatives per national minority and seven for Roma.

162. It urges the authorities to pay increased attention to the proposals put forward by the Councils of National Minorities. Such proposals should be followed up and any decisions not to take them up should be justified.

163. The Advisory Committee recommends that the authorities review the appointments procedures for the Roma Board in order to ensure that they are transparent and that they provide for effective representation of the interests of Roma.

**Participation in economic and social life:
access to health care, social protection and employment**

Recommendations from the two previous cycles of monitoring

164. In its previous monitoring cycles, the Advisory Committee urged the authorities to take further measures to improve the participation of Roma in socio-economic life. It invited the authorities to ensure universal and non-discriminatory access to social insurance, to combat ethnic discrimination in recruitment and ensure the effective implementation of the Action Plans for Roma Health and Employment, and to establish participatory monitoring and evaluation systems for these Action Plans.

Present situation

165. In the field of employment, the two arms of the Action Plan for Roma – co-funding for employers who employ Roma and support for the self-employment of Roma – allowed 119 Roma to gain access to employment in 2009 and 93 in 2010. However, serious flaws in the design and operation of this Action Plan urgently need to be remedied in order for the positive effects of the measures taken to have any sustainable impact.

166. The Advisory Committee observes in particular that Roma selected to participate in the self-employment programme have often not possessed the skills necessary to set up and run a successful business and have not received as part of the programme the support or training necessary to do so. As a result, many businesses have folded and the Roma concerned have had to seek commercial loans from banks to repay the loan they received from the State – meaning both that their financial situation has considerably worsened and that they are left without health cover as their move to self-employment meant that they were removed from the unemployment register.

167. As regards the co-funding system, employers are given no incentive to hire Roma beyond the initial prescribed funding period, and in many cases have simply replaced one individual with another at the end of this period; the system therefore does not provide sustainable solutions for Roma. Moreover, the data used to track the impact of the measures taken reportedly show only how many persons have gone through the programme and how much money has been spent and do not clearly indicate how many Roma remain employed beyond the period of co-funding. The Advisory Committee furthermore notes that the low level of education of many Roma compounds the problems they face in accessing employment and means that additional support measures are needed to accompany their entry into the labour market. It furthermore notes that very few Roma are employed in the public service, from local to State level, and those that do find such work are often employed at the lowest grades even where their level of education is high.

168. The Advisory Committee notes that access to social insurance is closely tied to access to employment and registration with the unemployment office. Identity documents are required for registration with unemployment bureaus, meaning that Roma without such documents are

automatically excluded, as are children who leave school more than 30 days before they turn 16 or who do not complete compulsory primary education⁵⁶ – of which a disproportionately high number are Roma. This means that many Roma are excluded from access to social insurance, aggravating the social exclusion and marginalisation they experience.

169. In the field of health, the three priority objectives of the Action Plan are improving access to healthcare, raising awareness in the field of healthcare and improving the health situation of Roma, the last of which was the main focus of actions carried out in 2009 and 2010. Thus, more than 500 Roma children were given free vaccinations in 2009. The Advisory Committee welcomes these positive steps but also notes that vaccinations are free for all children with health insurance cover; it therefore draws the attention of the authorities to the longer-term objectives that could be achieved by improving the access of Roma to health insurance cover and raising awareness in the field of healthcare. Short-term efforts such as vaccination campaigns – which undoubtedly achieve the positive result of improving the health situation of the persons they cover – should not be carried out to the exclusion of achieving longer-term and more far-reaching goals.

170. The Advisory Committee understands that under the health legislation of the Entities, health insurance is provided to adults on one of three bases: through employment, through registration with an unemployment office, or on the basis of a disability that prevents employment. Persons not entitled to health insurance on one of these three grounds may nonetheless be entitled to basic cover, with children under 18, pregnant women and mothers up to six months after birth being automatically insured. In the Federation, where competence in health matters is shared between the Entity and cantonal levels,⁵⁷ the provisions on basic cover for uninsured persons have however not been adopted by all cantons, which leaves Roma particularly vulnerable in the field of access to healthcare.

171. The Advisory Committee is also deeply concerned by numerous reports that it received concerning the denial of health care to Roma on discriminatory grounds, including to pregnant women under the age of 18, both in the Federation and in the Republika Srpska. Moreover, serious violations of the right to health, such as refusals to provide health care to Roma persons in emergency situations, have gone unpunished. This not only leaves the victims without a remedy, despite the legal provisions in place, but also means that there is no real pressure on healthcare providers to change their practice.

172. The Advisory Committee is deeply concerned by the marginalisation of the Roma population in Bosnia and Herzegovina. While it welcomes the steps taken by the authorities to improve the situation of Roma since joining the Roma Decade in 2010, it stresses the need for more resolute action in this field in order to promote the full participation in the socioeconomic sphere.

Recommendations

173. The Advisory Committee recommends that the authorities review the measures provided for under the Action Plan for Roma Employment in order to improve their capacity to lead to

⁵⁶ According to the information at the disposal of the Advisory Committee, a person must be 16 years of age to obtain identity papers, which are needed for registration with employment bureaus. Such registration must however also be completed within a 30-day period by any person who completes primary school and decides not to enrol in secondary school. This means that children who dropped out of school more than 30 days before they turned 16 cannot meet the 30-day deadline for registration. Children who dropped out of school without completing primary education also do not meet the conditions for registration with the employment bureau.

⁵⁷ Chapter III, Article 2(b) of the Constitution of the Federation.

sustainable employment for Roma. It is essential that Roma who participate in self-employment schemes not only receive funds but also receive training and support on how to run a successful business as an integral part of the programme, both prior to receiving funding and after they have set up a business. Likewise, co-funding schemes for employers should include measures to promote the sustainable employment of Roma. More should also be done to promote the employment of Roma at all levels of the public service.

174. The Advisory Committee recommends that the authorities take measures to address the gaps in social insurance cover that arise where individuals lack the necessary documents or the necessary level of education.

175. It also urges the authorities to devote increased attention to the goals of improving access to healthcare and raising awareness that are set out in the Action Plan for Roma Health. It urges those cantons that have not adopted provisions on universal basic health cover to do so rapidly. In parallel, work needs to be done to combat discrimination against Roma by healthcare providers, including by ensuring that effective sanctions are imposed wherever such discrimination occurs.

Participation in economic and social life: Access to adequate housing

Recommendations from the two previous cycles of monitoring

176. In its previous monitoring cycles, the Advisory Committee recommended that the authorities take a series of measures to improve the access to housing of Roma, and notably that they implement the Action Plan for Roma Housing swiftly, assist Roma in regaining property they owned before the armed conflict, discontinue forced evictions immediately and take measures to improve the living conditions in Roma settlements.

Present situation

177. The Advisory Committee notes with interest that the authorities at State level have allocated approximately 3 million BAM each year since 2009 to implementing the Action Plans for Roma in the fields of employment, health care and housing, the vast majority of which has been spent in the field of housing. This funding, which is allocated to projects that are co-funded by Entities, cantons, municipalities and/or NGOs, has served to construct or reconstruct housing and repair infrastructures. While it is possible for local authorities to make co-funding contributions in kind, for example through the provision of land, this possibility does not seem to have been greatly used.

178. Despite the measures in place to guarantee transparency and ensure the quality of the projects supported, such as public bidding procedures for projects, the Advisory Committee is concerned that numerous abuses and failings in the implementation of projects have seriously compromised their capacity to ameliorate the situation of Roma. In particular, lower levels of authorities have not responded with the levels of funding expected; Roma have reportedly been only rarely involved or adequately consulted in the preparation and implementation of housing projects; and considerable proportions of the funds invested have reportedly gone to the improvement of existing bricks-and-mortar houses, rather than providing for the most vulnerable who live in improvised shanties.

179. The Advisory Committee also notes with deep concern that the Action Plan for Roma Housing makes no provision for improving the housing situation of Roma living in informal settlements, although they are reportedly very numerous due to the high numbers of Roma displaced during the war and their difficulties in obtaining recognition of title to any property

they occupied prior to the war. Moreover, the living conditions in these settlements in particular remain substandard, with basic infrastructures lacking; the persons living there are among the most disadvantaged and vulnerable members of the Roma community, and they remain vulnerable to forced evictions.

Recommendations

180. The Advisory Committee urges the authorities at Entity, cantonal and local level to allocate adequate resources to the implementation of housing projects to be covered under the Action Plan for Roma Housing. It also recommends that the authorities step up their efforts to consult Roma regarding the identification of such housing projects, so as to ensure that they address the situation of those persons most in need.

181. The Advisory Committee urges the authorities to find ways to address the situation of Roma living in informal settlements, whether through legalising and improving conditions in these settlements or assisting Roma in gaining access to legal housing.

Article 17 of the Framework Convention

Free and peaceful contacts across frontiers and kin-State support

Recommendations from the two previous cycles of monitoring

182. In its previous monitoring cycles, the Advisory Committee invited the authorities to consider carefully the impact of support from abroad in education on the overall educational policies and, where appropriate, to review its educational policies, in order to ensure that they did not lead to further segregation along ethnic lines.

Present situation

183. The Advisory Committee notes with interest that some minority associations have developed strong co-operation with counterparts in kin-States, with the support of local or cantonal authorities, which has enabled cultural co-operation at local or cantonal level to be developed. It moreover notes that many minority representatives view such co-operation as essential as little funding is available from the State to support their cultural activities. However, as regards co-operation agreements in the field of education, the Advisory Committee again wishes to sound a note of caution in so far as some support received through such co-operation arrangements with neighbouring States is reported to contain divisive messages and may tend to accentuate ethnic divisions rather than enhance mutual understanding and respect as required by Article 6 of the Framework Convention. The Advisory Committee also observes that the national minorities that do not enjoy the support of a kin-State should not be left in a disadvantaged position.

Recommendation

184. The Advisory Committee again invites the authorities to consider carefully the impact of support from abroad in education on overall educational policies, and, where appropriate, to review its educational policies to ensure that they respond to the aim of promoting mutual respect, understanding and tolerance and do not further entrench division or segregation along ethnic lines.

Article 18 of the Framework Convention**Bilateral agreements on national minority protection***Recommendations from the two previous cycles of monitoring*

185. In its previous monitoring cycles, the Advisory Committee encouraged the authorities to pursue co-operation at regional level on minority protection and to step up efforts to conclude bilateral agreements in this field, as a way of contributing to the preservation of minorities' cultures and languages.

Present situation

186. The Advisory Committee notes that no bilateral or multilateral agreements on minority protection have been concluded since its previous Opinion. However, it welcomes the interest expressed by the authorities in concluding such agreements. It also welcomes the participation of Bosnia and Herzegovina in the joint programme of the Council of Europe and the European Union on Promoting Human Rights and Minority Protection in South East Europe, which is designed to improve minority protection by enhancing the capacities of the relevant national bodies and the regional coherence of their activities.

Recommendation

187. The Advisory Committee again encourages the authorities to pursue co-operation at regional level on minority protection. It also invites them to step up their efforts to conclude bilateral agreements on minority protection as a way of contributing to the preservation of minorities' cultures and languages.

III. CONCLUSIONS

188. 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 Bosnia and Herzegovina.

Positive developments following two cycles of monitoring

189. In addition to the national minority laws already in force at State and Entity levels, Tuzla and Sarajevo Cantons have adopted legislation with respect to national minorities. On 30 January 2013, Sarajevo Canton also approved amendments to its Constitution that will place persons not identifying with one of the constituent peoples – including persons belonging to national minorities – on the same footing as the constituent peoples as concerns the functioning of the cantonal assembly. Comprehensive antidiscrimination legislation was enacted at State level in 2009 and the State-level Institution of Human Rights Ombudsman published its first report on discrimination in Bosnia and Herzegovina in February 2012.

190. After considerable delays, a population census in Bosnia and Herzegovina is now planned for October 2013 and should provide up-to-date information on the population of Bosnia and Herzegovina for the first time since the end of the war, including information broken down by ethnic affiliation, religion and language. Census forms and background information have been translated into the languages of all 17 national minorities, and efforts are being made to ensure that persons belonging to national minorities are present in municipal census committees as well as amongst census enumerators.

191. Considerable work has been done over the past several years towards ensuring that Roma persons do not lack identity documents, and new legislation on birth registration has been adopted in both Entities. The civil registration process is now largely completed and work to resolve the remaining cases is on-going. The Ministry of Human Rights and Refugees has also conducted an extensive process of recording the number of Roma throughout Bosnia and Herzegovina and creating a database of their needs.

192. In the field of culture, some cities and cantons provide strong support to the cultural activities of national minorities. In education, the coordinating body of Ministers of Education of the Federation adopted in August 2012 a set of Recommendations for the Elimination of Segregating and Parallel Structures in Educational Institutions in the Federation of Bosnia and Herzegovina. A manual on national minorities for use in schools has also been developed.

193. Councils of National Minorities are now established at State level and in both Entities, as well as in Tuzla and Sarajevo Cantons. Representatives of national minorities were also able to be elected to reserved seats in municipal and city councils and assemblies in both the 2008 and 2012 local elections.

194. As part of Bosnia and Herzegovina's participation in the Decade of Roma Inclusion, the authorities have adopted Action Plans for Roma in the fields of health, employment and housing as well as education. These include a range of positive measures designed to remedy the inequalities experienced by Roma in these fields.

Issues of concern following two cycles of monitoring

195. The Constitutions of Bosnia and Herzegovina and of the Entities still distinguish between Bosniacs, Croats and Serbs, as constituent peoples, and “Others”. No progress has been made towards remedying the exclusion of persons belonging to national minorities from access to certain political posts, despite a judgment of the European Court of Human Rights finding that this was in breach of the European Convention on Human Rights. The failure to include representatives of national minorities adequately in current discussions on this point moreover means that they are not in a position to significantly influence the outcome of these debates.

196. The extent to which free and optional self-identification will be guaranteed in the 2013 census is of concern. More needs to be done to ensure that questions related to ethnic, linguistic and religious identity are voluntary and that multiple affiliations can be adequately expressed. A lack of consultation of national minorities prior to the pilot census needs to be addressed in the coming months in order to enhance trust in the census process amongst persons belonging to national minorities.

197. Cutbacks made to the budget of the Institution of Human Rights Ombudsman may be disproportionately affecting its capacity to work effectively to guarantee protection against all forms of discrimination. There is a need to take a more systematic, comprehensive approach to the handling of cases of possible direct or indirect discrimination against persons belonging to national minorities. Awareness of discrimination amongst citizens – and in particular persons belonging to national minorities – moreover remains low.

198. A number of obstacles to birth registrations still create acute problems for the Roma population and the lack of identity documents is still cited as one of the major causes of the Roma population’s lack of access to other rights. Uncertainty remains as to the number of Roma living in the country, and information regarding access to key social rights has reportedly not been included in the database on the needs of Roma. This undermines the authorities’ capacity to assess the main challenges and measures needed to improve the access to rights of Roma.

199. The implementation of the legal framework in place to protect the rights of national minorities remains weak. The lack of coordination between authorities at State, Entity and cantonal level and lack of monitoring of the extent to which the provisions of law have been implemented in practice also continue to have a negative impact on the advancement of minority rights in Bosnia and Herzegovina.

200. The overwhelming focus in political spheres on the situation of the constituent peoples leaves national minorities sidelined from public debates. Strong nationalist rhetoric on the part of politicians fuels rather than defuses ethnic tensions. The conflation of religion with ethnic affiliation accentuates this tendency. Numerous attacks against religious properties and sites have also occurred. This situation, combined with ethnic discrimination in access to the labour market and to other social rights, continues to act as a barrier to minority returns.

201. Support for cultural activities of national minority associations and organisations remains limited and ad hoc. National minorities also suffer from low visibility in the mainstream media: despite provisions allowing for national minorities to establish their own media and requiring public broadcasters to include specific programmes for national minorities in their schedules, there appears to be little effort to maintain a regular presence of national minorities in the public media. Nor have efforts been made to evaluate the needs and demands of national minorities as

regards the use of minority languages in contacts with the administrative authorities or as regards the display of topographical and other information signs in minority languages.

202. Ethnic segregation in schools persists: progress in eliminating the phenomenon of “two schools under one roof” remains slow and the number of mono-ethnic schools is increasing. The common core curriculum is not yet applied throughout the country and the subjects of history, geography and religion continue to be taught differently to pupils depending on the “national” curriculum that they follow. The lack of appropriate textbooks, teaching materials, qualified teachers and available premises moreover hampers efforts to promote the teaching of national minority languages. While a small number of schools provide optional classes for the teaching of minority languages, in most cases such teaching occurs outside the school environment, and no public schools deliver instruction in the language of a national minority.

203. Although a number of positive measures are in place to improve Roma children’s access to education, these measures do not always reach Roma children in practice and are insufficient for families living in extreme poverty. Flaws in the design and operation of the measures foreseen as part of Bosnia and Herzegovina’s participation in the Decade of Roma Inclusion reduce their effectiveness, and Roma continue to experience marginalisation and discrimination in the fields of access to employment, health and housing. Roma living in informal settlements in particular face substandard living conditions and remain vulnerable to forced evictions.

204. As regards political representation of national minorities, abuses of the system of reserved seats for national minorities in local elections have been reported and there was a significant drop between the 2008 and 2012 local elections in the number of such representatives elected. Problems regarding the composition of the Councils of National Minorities at the level of the State and of the Federation of Bosnia and Herzegovina, as well as a lack of interest in their work displayed by their parliamentary interlocutors, have also affected their capacity to influence the affairs of national minorities. Problems regarding the transparency of appointments to the Roma Board, affecting its representativeness, have also been reported.

Recommendations

205. 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 action⁵⁸

- **Make all questions relating to ethnic or national affiliation in the forthcoming census optional; ensure, in consultation with national minorities, that the possibilities of self-identification allow clearly for the expression of multiple affiliations and for identification with groups other than one of the constituent peoples or national minorities; undertake awareness-raising measures among persons belonging to national minorities in advance of the census and pursue efforts to ensure their effective participation in the census process;**

⁵⁸ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

- **Move forward rapidly – and in time for the amendments to apply to the 2014 elections – towards amending the Constitution and other relevant legal provisions so as to eliminate the exclusion of “Others”, including persons belonging to national minorities, from running for presidential office and for office as a member of the House of Peoples of Bosnia and Herzegovina, adopting an approach that enhances the participation of all without further entrenching divisions and ensuring that persons belonging to national minorities are directly involved and adequately consulted in this process;**
- **Take as a matter of priority all necessary steps to eliminate segregation in education, in particular through accelerating the work to abolish all remaining cases of “two schools under one roof” and replace them with integrated education, as well as through working to avoid the development of mono-ethnic schools in areas inhabited by a mixed population, drawing in this context on the experiences of areas where successful integrated education is in place;**
- **Ensure that the existing common core curriculum is applied in every school in Bosnia and Herzegovina and extend the subjects it covers to include history, geography and religion; introduce inclusive and multi-perspective teaching of these subjects;**
- **Ensure that the implementation of the Action Plan on the Educational Needs of Roma and Other National Minorities is adequately funded and evaluated; ensure that Roma children are not prevented from enrolling in school because they lack identity papers; develop further practices that strengthen the link between Roma families and schools; take resolute measures to improve the implementation of the Action Plans for Roma Employment, Health and Housing and address the situation of Roma living in informal settlements;**

Further recommendations⁵⁹

- Provide the Institution of Human Rights Ombudsman with all the necessary financial and human resources to carry out its functions effectively and efficiently; support awareness-raising activities about discrimination and the available remedies, with a particular focus on reaching persons belonging to national minorities;
- Complete the process of civil registration of Roma rapidly and introduce free and universal birth registration to ensure that especially vulnerable children are in all cases registered;
- Strengthen coordination between the relevant authorities to ensure that legislation on national minorities is fully and consistently implemented; provide regular and more substantial support to national minorities in order for them to maintain and develop their cultural heritage and languages;

⁵⁹ The recommendations below are listed in the order of the corresponding articles of the Framework Convention

- Promote intercultural dialogue and mutual understanding between the different ethnic and religious groups in Bosnia and Herzegovina; condemn all manifestations of intolerance and ethnically motivated hostility in the political sphere and intensify efforts to combat all forms of hostility directed at minority groups;
- Step up efforts to ensure that persons belonging to national minorities have effective access to the media; evaluate needs and demands regarding the use of minority languages in relations with the administrative authorities and for the display of topographical and other signs; fully apply the existing provisions of Entity legislation in this field;
- Step up efforts to develop the teaching in and of minority languages in areas where persons belonging to national minorities are settled traditionally or in substantial numbers;
- Take resolute measures to ensure that the possibilities of representation in municipal councils and assemblies laid down by law for persons belonging to national minorities are real and effective in practice; amend the provisions governing membership of the Roma Board and of the various Councils of National Minorities where necessary to ensure that they are transparent and duly representative.