

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

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Summary

The authorities in Romania promote respect and understanding in society and representatives of most national minorities report an overall embracing attitude prevailing between the majority and the minorities. The authorities have made efforts to promote minority cultures and education, and particular steps which have been taken to facilitate representation of national minorities in parliament are widely recognised and appreciated. The Law on Education remains the main legislative basis for teaching in and of national minority languages.

A consolidated and coherent legal framework related to the protection of minority rights is lacking and the draft Law on the Status of National Minorities, proposed in parliament in 2006, has still not been adopted. Existing legislation regulating different aspects of national minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation. A coherent policy to guarantee access to minority rights is still lacking and respect of rights of persons belonging to national minorities varies according to local conditions and the goodwill of the municipal or regional authorities.

Persistence of negative attitudes and prejudice against the Roma and anti-Hungarian sentiment is of considerable concern. Despite the resolute stance of the National Council for Combating Discrimination, court rulings and statements from the authorities, racist incidents continue to be reported.

The revised Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority – 2012-2020, adopted in 2015, sets targets in the key areas of education, employment, health and housing and addresses also promotion and protection of Roma culture and participation in public and political life. Regrettably, the strategy neither identifies sources of funding, nor contains mechanisms to ensure its implementation. Roma continue to suffer discrimination in access to housing, infrastructure, employment, health care and education. Evictions have continued without adequate alternative housing being proposed. Roma children face difficulties in accessing education and a considerable number of Roma children drop out at an early stage. Segregation of Roma children at school is still reported in spite of authorities' stated aim to eradicate it. All the identified shortcomings need to be addressed urgently.

The electoral law of 2015 provides for election to parliament of one representative of each national minority on a preferential basis, but does not create favourable conditions for free and fair competition. The almost monopolistic position of national minority organisations participating in the work of the Council of National Minorities as regards access to funding, affects negatively the possibility of developing pluralism within each national minority community.

Recommendations for immediate action:

- **adopt without further delay and in consultation with representatives of national minorities a consolidated and coherent legal framework related to minority rights protection; take due care when examining draft legislation not to restrict the rights and freedoms guaranteed by the Framework Convention and ensure that effective participation of persons belonging to national minorities in discussions at local and regional levels is guaranteed;**
- **increase efforts to prevent and to combat inequality and discrimination suffered by the Roma; take further measures to eliminate all forms of segregation of Roma children and other forms of discrimination of Roma children at school with a view to including them fully into mainstream education; ensure that adequate alternative non-segregated accommodation is provided without delay to Roma inhabitants relocated from dwellings unsuitable for habitation;**
- **take targeted and effective action without delay to prevent, investigate and prosecute offences committed with racial or xenophobic motive; investigate promptly and in a transparent manner all cases of alleged police abuse and misconduct, so as to ensure that the public, including the Roma, have confidence in the impartiality and effectiveness of the complaints mechanism in such cases; take a robust stance against and condemn racist, xenophobic and anti-Roma language in political discourse and in the media;**
- **review as a matter of urgency the legal and administrative provisions on elections with a view to creating conditions for free and fair competition in the electoral process between different organisations representing national minorities; review the procedure of appointment of national minority members to the Council of National Minorities with a view to making it more inclusive and genuinely representative of diversity within national minorities.**

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I. Key findings

Monitoring process

1. This fourth cycle opinion on the implementation of the Framework Convention by Romania was adopted in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97)10 of the Committee of Ministers. The findings are based on information contained in the Fourth State Report, submitted by the authorities on 1 February 2016, other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Bucharest, Cluj-Napoca, Suceava and Constanța from 3 to 7 April 2017.

2. The Advisory Committee regrets that the state report was submitted with a two-year delay. It welcomes nonetheless the authorities' overall constructive and co-operative approach towards the monitoring process and the considerable assistance provided by them before, during and after the 4th cycle visit.

3. The Advisory Committee notes with regret that no follow-up seminar was organised in Romania after the conclusion of the last monitoring cycle. Such an event would have been a useful opportunity for discussion of the opinion and the Committee of Ministers' recommendations, as well as more generally of developments affecting national minorities and policies implemented to address their concerns. Moreover, the Advisory Committee regrets that its last opinion and the resolution of the Committee of Ministers on Romania were not translated into Romanian and national minority languages, limiting their dissemination within society. In 2017, the authorities translated all four thematic commentaries elaborated over the years by the Advisory Committee, into the Romanian language, which is highly appreciated.

4. The Advisory Committee looks forward to continuing its dialogue with the authorities of Romania as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present opinion public upon its receipt. It also invites the authorities to translate the present opinion and the forthcoming Committee of Ministers' Resolution into Romanian and minority languages, and to disseminate it widely among all relevant actors. The Advisory Committee considers that a follow-up discussion to review the observations and recommendations made in the current opinion would be particularly beneficial to all.

General overview of the current situation

5. The authorities in Romania promote respect and understanding in society and representatives of most national minorities report an overall embracing attitude prevailing between the majority and the minorities. Efforts of the authorities to promote minority cultures and education as well as particular steps taken to facilitate representation of national minorities in parliament are widely recognised and appreciated. However, the persistence of negative attitudes and prejudice against the Roma and anti-Hungarian sentiment is of considerable concern. In particular, the continuing pernicious language employed by some

politicians against the Roma and persons belonging to the Hungarian minority perpetuate divisions which are detrimental to finding solutions to problems affecting society. In addition, racism and anti-Hungarian sentiment continue to be a negative undercurrent at sports events in Romania. The authorities have taken measures to combat racism, prejudice and intolerance by various means including the revision of the Criminal Code and harmonisation of national anti-discrimination legislation with the European Council Directive on Racial Equality.¹

6. Romania has continued its efforts to protect national minorities since the ratification of the Framework Convention. It has to be noted however, that a consolidated and coherent legal framework related to the protection of minority rights is still lacking and the draft Law on the Status of National Minorities, has still not been adopted and continues to be discussed in parliament. According to many representatives of national minorities, existing legislation regulating different aspects of national minority protection is spread over many legislative acts, open to diverging and sometimes contradictory interpretation, thus impeding access of persons belonging to national minorities to rights. Access to rights varies according to local conditions and existence or not of goodwill on the part of the municipal or regional authorities.

7. The revised Strategy of the Government of Romania for the inclusion of Romanian citizens belonging to the Roma minority for the period 2012-2020, adopted in 2015, goes beyond setting targets in the key areas of education, employment, health and housing and addresses also promotion and protection of Roma culture and participation in public and political life. The strategy is accompanied by specific measures in each major field of intervention. Regrettably, it does not identify sources of funding and does not contain mechanisms to ensure implementation of the strategy at local level. It has to be noted that measures taken thus far to eliminate segregation of Roma children at school, to improve living conditions, to reduce the unemployment rate among Roma and to change the societal attitude towards them have not yielded discernible results.

Assessment of measures taken to implement the recommendations for immediate action

8. In 2015, the authorities adopted a revised National Roma Inclusion Strategy which takes into account the EU recommendations on Roma inclusion. It has to be noted, however, that the Roma continue to suffer discrimination in access to housing, infrastructure, employment, health care and education. Evictions of vulnerable Roma have continued without adequate alternative housing being proposed and without consultation with those concerned. Persons evicted in 2010 from the centre of Cluj-Napoca to the Pata Rât industrial area on the edge of the city's garbage dump continue to subsist there in the most primitive of conditions. Similar evictions were carried out in Baia Mare and Eforie Sud. In Baia Mare, the wall built to separate Roma houses from the rest of the residents continues to stand in spite of the court ruling declaring its construction an act of discrimination.²

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>.

² OHCHR, Cases of discriminatory practices related to housing, where the National Council for Combating Discrimination pronounced decisions, available at www.ohchr.org/Documents/Issues/Housing/RightLife/RomaniaAnnex.docx.

9. There has been no progress with the adoption of a consolidated and coherent legal framework related to minority rights protection. Existing legislation regulating different aspects of national minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation which on occasion needs to be resolved by the judiciary.

10. As was with case with prior legislation, the 2015 electoral law contains specific provisions on preferential seats for representatives of national minorities. These provisions allow election on a preferential basis, of one representative of each national minority represented in the Council of National Minorities (CNM). It has to be noted, however, that the existing legal and administrative provisions on elections do not create favourable conditions for free and fair competition in the electoral process between different organisations representing national minorities. Furthermore, conditioning membership in the CNM on participation of the prospective organisation of a national minority in parliamentary elections, coupled with a real possibility of the authorities to influence which organisations are allowed to stand in such elections, makes the successful organisation play a double role of representing national minorities before the authorities and vice versa. The almost monopolistic position of national minority organisations participating in the work of the CNM, as regards access to resources disbursed by the Department for Interethnic Relations affects negatively the possibility of developing pluralism and creativity within each national minority community.

11. The Law on Education remains the main legislative basis for teaching in and of national minority languages. The conditions for setting up classes teaching a national minority language, literature, history, traditions and religion have been clarified and the curricula, including for teaching Romanian to children using another language as their first language are being progressively introduced in schools. Unfortunately, children belonging to the majority population do not acquire adequate knowledge of minority culture and historical perspective in the course of their schooling. The history of national minorities in Romania is taught only as an elective subject in grade 10 and the provision of an adequate textbook is problematic.

Assessment of measures taken to implement the further recommendations

12. There have been some encouraging developments as regards support for groups not included in the protection of the Framework Convention and not participating in the work of the Council of National Minorities. Of note in particular is support offered by the Ministry of Culture and National Identity to an e-learning platform for the Aromanian language, Aromanian language courses and cultural events promoting Aromanian cultural heritage. The authorities' assertion that access to rights under the Framework Convention applies also to the Hungarian Csangos is welcome.

13. The authorities have taken steps to combat intolerance, racism, and xenophobia. The new Criminal Code, which entered into force in 2014 introduced a new definition of incitement to hatred or discrimination and extended racial motivation as an aggravating circumstance to cover all criminal offences. In 2013, national anti-discrimination legislation was harmonised with the provisions of the EU Council Directive 2000/43/EC.

14. Notwithstanding these positive undertakings, there is a widely acknowledged perception of persisting xenophobia and intolerance directed in particular against the Roma and antagonism against the Hungarian minority. Overall, it is welcomed that far-right political

parties are not successful in contesting national elections. However, intolerant language which used to be restricted to the extreme right-wing political parties has, over the years, become commonplace and entered mainstream political discourse. Regrettably, it has to be noted that negative stereotypical portrayal of the Roma and exacerbated nationalism brings a measure of electoral success in particular at local level, and even more respectable political organisations resort to using anti-Roma and anti-Hungarian rhetoric.

15. Public radio and television channels continue to broadcast a wide array of programmes for or about national minorities. Three dedicated departments for programming in Hungarian, German and in the languages of other minorities produce programmes broadcast by all channels of the public Romanian Television Society (TVR) and Romanian radio. The process of digitalisation of Romanian television and radio progressed significantly in recent years with more than half of all households having undergone a digital switchover by the end of 2016. Concerns continue to be expressed by some representatives of national minorities with regard to the discontinuation by some cable companies of the provision of signal of channels produced in neighbouring states in languages of these minorities and availability of programming in national minority languages in areas not covered by the signal of regional TV producers, as is the case of viewers in Covasna, Harghita and Mureş counties, who are unable to access programmes produced by TVR Cluj-Napoca in the Hungarian language.

16. The authorities have taken steps to prevent and eliminate segregation of Roma children at school. Monitoring with the view to preventing segregation and reporting on measures taken has been put in place. Regrettably, de-segregation is occasionally conducted very superficially, and research demonstrates that segregation in some form persists in many schools of the country. A deadline, set in the National Roma Inclusion Strategy for all counties to develop de-segregation plans and for the legislation to strengthen de-segregation measures to be adopted by the end of 2016, was not met. Roma children continue to face difficulties in accessing education. According to different surveys, 22% of school-age Roma children do not attend school and Roma constitute 70% of school dropouts. In consequence 31% of Roma view themselves as illiterate.

II. Article-by-article findings

Article 3 of the Framework Convention

Scope of application of the Framework Convention

17. The Advisory Committee notes that there have been no changes in the overall approach of the Romanian authorities towards the personal scope of application of the Framework Convention. Only those national minorities whose representatives have been invited to participate in the work of the Council of National Minorities (CNM), established in 1993,³ benefit from measures undertaken to promote and protect the rights of persons belonging to national minorities. Law No. 208/2015 on the Elections of the Senate and Chamber of Deputies, as well as the Organization and Functioning of the Permanent Electoral Authority expressly states in Article 56 (3) that “By national minority is meant the ethnicity represented in the Council of National Minorities”.

18. The Advisory Committee notes that since the inclusion of the Macedonians and the Ruthenians in the CNM in 2000, the membership of the council remained unchanged until 2016, and was composed of 19 organisations representing 20 national minorities: Albanians, Armenians, Bulgarians, Croats, Germans, Greeks, Hungarians, Italians, Jews, Poles, Roma, Russian-Lipovans, Serbs, Slovaks and Czechs,⁴ Tatars, Turks, Ukrainians, Macedonians and Ruthenians. Membership in the CNM is directly dependent on participation in parliamentary elections, as only organisations which successfully contested parliamentary seats are entitled to be represented. As no organisation of the Tatar national minority participated in the last parliamentary elections, held in December 2016, the seat occupied at the CNM by a representative of that minority remains currently vacant (see also under Article 15).

19. The Advisory Committee notes that representatives of the Aromanian and the Csango communities ask to be protected as national minorities. It notes that, in spite of sustained efforts to maintain their self-identification and in spite of the number of persons declaring their Aromanian or Csango ethnicities in the 2011 census, the central authorities have not examined this issue since the first monitoring cycle. Aromanians⁵ and Huculs continue to be considered respectively as ‘sub-ethnic’ groups of Romanian or Ukrainian national groups. The Advisory Committee wishes to recall that the application of the provisions of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority or the existence of specific legal status as a group. It emphasises further that the right to free self-identification contained in Article 3 of the Framework Convention is a cornerstone of minority rights and every person must have the right to identify freely as a member of a specific group, or to choose not to do so, provided that

³ See Government Order No. 137/1993 On the functioning of the Council for National Minorities as amended by Government Order No. 220/1993 (18 May 1993), available at www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Romania/orderonthefunctioningofthecouncilfornationalminorities.docx.

⁴ Persons belonging to the Czech and Slovak national minorities are represented by a single organisation.

⁵ The number of persons declaring their Aromanian ethnicity was not published following the 2011 census. According to the 2002 census, there were 25 053 Aromanians and 1 334 Macedo-Romanians in Romania.

“the choice of the individual is not to be arbitrary but must be linked to some objective criteria”.⁶

20. The Advisory Committee notes encouraging developments such as support offered by the Ministry of Culture and National Identity to an e-learning platform for the Aromanian language, Aromanian language courses and cultural events promoting Aromanian cultural heritage, financed by the European Economic Area (EEA) Financial Mechanism under the project Conservation and Revitalisation of Cultural and Natural Heritage. It notes also the authorities’ assertion that the access to rights under the Framework Convention applies also to the Csangos.⁷ It regrets, however, that in spite of these assertions and developments, the discussion with representatives of the Aromanian and Csango communities, which has been ongoing with varying intensity for years, has not yielded concrete results and the situation of these persons has remained unchanged.

Recommendations

21. The Advisory Committee calls on the authorities to review, in consultation with representatives of national minorities, legal provisions and administrative practice regulating the representation of national minorities in the Council of National Minorities with a view to eliminating identified shortcomings, in particular as concerns the linkage between participation in parliamentary elections and membership in the council.

22. The Advisory Committee reiterates its recommendation to promote an inclusive approach concerning the scope of application of the Framework Convention. It considers that it should be possible to examine, in consultation with those concerned, the possibility of inclusion in the application of the Framework Convention of persons claiming specific protection as a national minority belonging to groups which currently do not have such rights, on an article-by-article basis, in particular as regards their linguistic and cultural interests.

Census

23. The last census was organised in Romania in October 2011. However the questionnaire did not allow respondents to indicate more than one ethnic and more than one linguistic affiliation (mother tongue). The census questionnaire made it clear that respondents were free to express their opinion “without any constraints” as regards questions 23 (on “ethnic affiliation”), and 24 (on “mother tongue”), but the questionnaire did not make it clear that answering these questions was mandatory. Furthermore, available options did not make it possible for respondents to indicate more than one ethnic affiliation, contrary to the Conference of European Statisticians Recommendation for the 2010 Censuses of Population and Housing.⁸

⁶ See ACFC Thematic Commentary No. 4 on the scope of application of the Framework Convention on the Protection of National Minorities (2016), para. 9, p. 7 and para. 28, p. 12.

⁷ See state report, p. 15.

⁸ Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) and the United Nations Economic Commission for Europe, paragraph 426: “respondents should be free to indicate more than one ethnic affiliation or a combination of ethnic affiliations if they wish so”; paragraph 431: “Questions will generally

24. During the census, information on ethnicity was collected for 18.8 million persons (94.9% of the total “usual resident population”, as listed by the Central 2011 Population and Housing Census Commission).⁹ The final results of the population and housing census published on 4 July 2013,¹⁰ differed from the provisional results, published on 2 February 2012.¹¹ In particular, a significant decrease in the number of persons declaring belonging to one of the less numerous ethnic groups, such as Albanians or Macedonians undermined confidence on the part of persons belonging to national minorities in the accuracy of the figures. Furthermore, the Advisory Committee notes that persons declaring themselves as Aromanians, Vlachs, Macedo-Romanians and Istro-Romanians were aggregated with persons declaring Romanian ethnicity.

25. The Advisory Committee wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for formulating and implementing effective policies and measures to protect minorities and for helping to preserve and assert their identity. However, the census cannot be considered as the only indicator of their number when implementing these policies and measures. This is especially the case in a context such as that of Romania, where a number of rights are dependent on census-based thresholds (see also under Article 10 and 11).

26. The number of Roma who declared their ethnic identity in the census (621 600 persons) is significantly smaller than the estimates of 1.8 million – 2.5 million made by the Roma themselves as well as international organisations.¹² In this context, the Advisory Committee notes the recent study conducted by the government-run Romanian Institute for Research on National Minorities (ISPMN),¹³ which estimated the number of Roma to account for 1.2 million (about 6.1% of the total population of the country).¹⁴

Recommendations

27. The Advisory Committee calls on the authorities to review in advance of the next census, and in close consultation with minority representatives, the methodology of the census, the wording of the questions and safeguards for voluntary and informed answers.

refer to one language only. Multiple languages may be required for the mother tongue and main languages of minority groups.”

⁹ The number of persons declaring belonging to one of the national minorities was: Hungarians – 1 238 000, Roma - 622 000, Ukrainians - 51 000, Germans - 36 000, Turks - 28 000, Russian-Lipovans - 24 000 and Tatars - 20 000 persons. Other national minority groups counted less than 20 000 members each.

¹⁰ Press Release No. 159 on the final results of the Population and Housing Census - 2011 (demographic characteristics of population), published on 4 July 2013, available at www.insse.ro/cms/files/statistici/comunicate/RPL/RPL%20rezultate%20definitive_e.pdf.

¹¹ Press Release on the provisional results of the 2011 Population and Housing Census (2 February 2012) available at www.insse.ro/cms/files/statistici/comunicate/alte/2012/Comunicat%20DATE%20PROVIZORII%20RPL%202011e.pdf.

¹² For example, Minority Rights Group International claims that “the European Commission (2004) and UNHCR (2004) both put the Roma as numbering between 1.8 million and 2.5 million”, see <http://minorityrights.org/minorities/roma-14/>.

¹³ Research Report, Mapping of Roma communities in Romania, Romanian Institute for Research on National Minorities (ISPMN), Cluj-Napoca, 2017 available at www.ispmn.gov.ro/nodes/term/slug:studii-despre-romii-din-romania (in Romanian).

¹⁴ Research Report, footnote 13, p. 36.

Respondents should have the possibility to indicate multiple affiliations, in line with EUROSTAT recommendations. It further encourages the authorities to ensure that quantitative and qualitative data, disaggregated by sex, age, and geographical distribution, is regularly made available for the design of targeted policies and measures aimed at the promotion of effective equality.

28. The Advisory Committee encourages the authorities to develop mechanisms for the regular collection of updated and reliable information on the number of persons belonging to national minorities, as well as on their situation as regards access to rights and resources. Ethnic data collection should be conducted in close co-operation with national minority representatives and with full respect for the safeguards, notably those related to international standards on the protection of personal data.

Article 4 of the Framework Convention

Legal and policy developments concerning legislation on national minorities

29. The Advisory Committee notes with concern that there has been no progress with the adoption of the Law on National Minorities, in spite of it being on the legislative agendas of successive Romanian governments. The draft Law on the Status of National Minorities (draft Law No. 502/2005) has been discussed in successive parliaments since 2005, with no clear prospects for its adoption. Since 2012, the draft law has not been on the agenda of the parliament, having been sent for further analysis to the Committee for Human Rights, Cults and National Minorities. While the Advisory Committee generally does not consider specific minority legislation to be a prerequisite for the implementation of the Framework Convention, which may also be guaranteed through a set of various pieces of legislation or administrative instructions, it expresses its concern at the absence of a consolidated and coherent legal framework related to the protection of minority rights in Romania.

30. According to many interlocutors of the Advisory Committee, existing legislation regulating different aspects of national minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation, which on occasion needs to be resolved by the judiciary. At state and local level, a coherent policy on national minorities is still lacking, and respect of rights of persons belonging to national minorities varies according to local conditions and goodwill on the part of the municipal or regional authorities. National minority claims are not given proper consideration by authorities at different levels and the possible effects of new laws on access to rights by persons belonging to national minorities are not adequately taken into account (see in particular under Articles 5 and 15).

Recommendation

31. The Advisory Committee urges the authorities to adopt a consolidated and coherent legal framework related to minority rights protection. Any future legislation affecting directly or indirectly access to rights protected under the Framework Convention should be properly scrutinised in consultation with representatives of national minorities to ensure that the interests of persons belonging to national minorities are duly taken into account.

Prevention and protection against discrimination

32. The National Council for Combating Discrimination (NCCD), established in 2000, has been actively combating discrimination, initiating procedures on its own initiative as well as investigating complaints lodged by individuals and legal persons. The principle of sharing of the burden of proof before the courts and the NCCD was strengthened in March 2013 by a law which stipulated that a complainant “will have to present facts”, instead of “proof, from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts does not constitute discrimination”.¹⁵ The Advisory Committee further notes that the amount of the fines which the NCCD can impose has been significantly increased to 30 000 Romanian RON¹⁶ if the victim is an individual and to 100 000 RON when the victims are a group or a community.¹⁷

33. The NCCD continues to enjoy public support and receives a substantial number of complaints every year. The number of individual complaints oscillated between 752 (in 2015) and 858 (in 2013) in the last five years. In 2016, the last year for which figures are available, the NCCD received 842 complaints of discrimination. Allegations of discrimination on the basis of ethnicity were made in 81 complaints, of discrimination on the basis of language in 25 cases, and on the basis of race in three cases. The NCCD issued 111 fines, 53 warnings and made 44 recommendations.¹⁸ The Advisory Committee notes that approximately 86% of the NCCD decisions, which were appealed against in 2016, were upheld by competent courts of law (such as appeal courts and the High Court of Cassation and Justice). Furthermore, it has to be noted that the courts called on the NCCD to formulate expert opinions in approximately 750 cases before them, in which a violation of the non-discrimination principle was invoked. Regrettably, the NCCD operates solely from its central office in Bucharest, and has no regional support which would allow it to have a more significant outreach in the country.

34. The Advisory Committee notes, however, with concern that funding for the NCCD has not increased since 2009, amounting in 2016 to 5 941 000 RON. Limited funding from the state budget obliged the NCCD to rely on extra-budgetary funding, primarily from foreign donors, for awareness-raising and training activities which it has been carrying out in addition to its core activities. Furthermore, financial constraints prevented the NCCD from hiring staff essential to its functioning. Of the 89 positions at the NCCD, only 70 were funded in 2016, with only 63 employees at the end of 2016.

35. The Advisory Committee recalls that the Advocate of the People (Ombudsperson) has been mandated to receive complaints and settle disputes between individuals and government agencies and to examine, *inter alia* matters relating to national minorities, justice and the police. The office holder can also act *ex officio*. The number of petitions lodged with the

¹⁵ See also ECRI Report on Romania (19 March 2014) CRI(2014)19, para. 43, available at www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf.

¹⁶ 1 000 RON is equivalent approximately to 219 €.

¹⁷ Report on Measures to Combat Discrimination (Directives 2000/43/EC and 2000/78/EC) Country Report 2013 Romania, *Romanița Iordache*, p. 55, available at www.refworld.org/pdfid/541acc0f4.pdf.

¹⁸ See NCCD Activity Report 2016, p. 11 and p. 20, available at http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2017/04/Activity_Report_2016.pdf.

Advocate of the People has been rising steadily.¹⁹ The Advisory Committee notes that petitions alleging violations of rights on the grounds of ethnicity constituted a small proportion of these, with only 31 petitions registered under the heading Equal opportunities for men and women, religious cults and national minorities. This low number of petitions attests to the observation the Advisory Committee already made in its previous opinion about insufficient confidence on the part of national minorities in the Ombudsperson institution to provide effective remedy in cases of alleged discrimination, especially with regard to national minorities and the Roma.

Recommendations

36. The Advisory Committee calls on the authorities to continue to support and to cooperate with the National Council for Combating Discrimination and the Advocate of the People (Ombudsperson), in order to allow them to carry out their respective roles effectively.

37. The Advisory Committee urges the authorities to provide the National Council for Combating Discrimination with the appropriate financial and human resources, in order to allow it to fulfil its duties effectively and independently.

Application of the principles of equality and non-discrimination with regard to the Roma

38. The main body responsible for promoting measures is the National Agency for Roma (NAR). The Advisory Committee welcomes the authorities' stated commitment to implement the revised Strategy for the Inclusion of Romanian citizens Belonging to the Roma minority – 2012-2020.²⁰ The Advisory Committee notes that the strategy is accompanied by specific measures in each major field of intervention, namely in education, employment, health and housing (see also under Articles 12 and 15) and, in addition, addresses other issues such as access to social services and infrastructure, culture and discrimination.

39. The Advisory Committee notes with regret that, according to their own assessment, Roma NGOs were not properly consulted at the drafting stage and their comments and suggestions were not taken into account in the adopted document. Notwithstanding this, Roma NGOs whose comments were not taken into account, elaborated their own Strategic Vision for Roma Integration.²¹ While welcoming the outlined measures contained in the strategy, Roma representatives informed the Advisory Committee of their apprehension as regards the implementation and monitoring mechanisms (which are very formal and lack qualitative assessment mechanisms and which are left in the hands of the NAR) as well as an absence of identifiable sources of funding. Moreover, in its assessment paper on Effective Roma integration measures in the Member States 2016, the European Commission identified multiple shortcomings, including unclear political and financial commitment of national and local authorities, limited institutional capacity and sustainability of projects beyond European

¹⁹ In 2009, the Office of the Advocate of the People received 8 295 petitions; in 2014 their number rose to 10 346; in 2015 to 12 164 and in 2016 to 12 519. See Annual report 2016 of the Advocate of the People, available at http://www.avp.ro/rapoarte-anuale/raport_2016_avp.pdf.

²⁰ The Strategy of the Government of Romania for the inclusion of the Romanian citizens belonging to Roma Minority for the period 2012-2020 was revised on 14 January 2015, and is available at http://ec.europa.eu/justice/discrimination/files/roma_romania_strategy_en.pdf.

²¹ See Romani CRISS (Roma Center for Social Intervention and Studies) Brief Points on the Adoption of the Strategy for Roma Inclusion 2014-2020 (8 March 2015).

structural and investment funds.²² The Advisory Committee considers that overreliance on EU funding jeopardises the implementation of the strategy and creates the wrong impression that Roma issues are not a responsibility of the government but a matter for the EU. The Advisory Committee notes with regret that the above factors put into question chances for reaching the strategy's objectives. The strategy, as it was drafted, is indicative of a top-down approach which does not reflect the heterogeneity of different Roma groups in Romania and their different local contexts.

40. Roma representatives continue to report ongoing discrimination in access to suitable social housing and forced evictions. One sadly notorious case concerns the eviction in 2010 of some 350 Roma from the centre of Cluj-Napoca to Pata Rât industrial area on the edge of the city's garbage dump. In spite of the Cluj-Napoca County Court finding in January 2014 the eviction illegal and ordering the city authorities to pay damages to the applicants and provide them with adequate housing,²³ the Roma continue to subsist at Pata Rât, with no electricity in damp and overcrowded dwellings, their numbers having grown in the meantime to around 300 households (no less than 1 156 persons).²⁴ The Advisory Committee notes with alarm that according to local Roma representatives, around 100 children from Pata Rât are deprived of any schooling. Initiatives to improve the situation of residents have rested mainly with NGOs and foreign donors such as the Norwegian grants available under the EEA Financial Mechanism for 2009-2014. This allowed the construction of 35 houses in various neighbouring communities.

41. In other, unrelated but similar cases, Baia Mare municipal authorities relocated around 90 Roma families in 2012 to a former copper factory and in Eforie Sud in 2013, 101 Roma, including 55 children, were left homeless, their houses having been bulldozed. The Eforie Sud eviction was deemed illegal in June 2016 by the Constanța County Court which also ordered the municipality to provide the victims with adequate housing.²⁵ The Advisory committee notes that as of the end of 2016, the situation has not been satisfactorily resolved.²⁶ Furthermore, the Advisory Committee has been informed about evictions in 2016 of 500 Roma in the 5th Sector of Bucharest and 100 Roma in the 3rd Sector of Bucharest. Generally, there are no exact statistics on the number of persons evicted. Romanian law does not impose an obligation of genuine consultation prior to an eviction, and authorities are not required to serve adequate

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Effective Roma integration measures in the Member States 2016, p. 78, available at http://ec.europa.eu/justice/discrimination/files/roma-report-2016_en.pdf.

²³ Amnesty International, Romanian court victory: Forced eviction of Roma in Cluj-Napoca illegal, available at <https://www.amnesty.org/en/press-releases/2014/01/romanian-court-victory-forced-eviction-roma-cluj-napoca-illegal/>.

²⁴ Coordinated interventions for combating marginalization and for inclusive development targeting inclusively but not exclusively the vulnerable Roma through de-segregation and resettlement of the Pata Rat Area using the leverage of EStF, available at <http://localdevelopmentforinclusion.org/assets/05-draft-outline-to-the-de-segregation-and-social-inclusion-action-plan-for-pata-rat-2014-2023.pdf>.

²⁵ European Roma Rights Centre (ERRC), Municipality Ordered to Rehouse Roma Evicted from Eforie in 2013, available at <http://www.errc.org/article/municipality-ordered-to-rehouse-roma-evicted-from-eforie-in-2013/4487>.

²⁶ Amnesty International Report Romania 2016/2017, available at www.amnesty.org/en/countries/europe-and-central-asia/romania/report-romania/.

and reasonable notice prior to evictions concerning persons living in informal settlements. The Housing Law No. 114/1996 does not explicitly impose an obligation to provide an adequate alternative housing solution to the persons evicted.²⁷ The Advisory Committee notes with regret that the Ombudsperson is not conducting ex officio monitoring of evictions throughout the country. It takes note however of the research project carried out by the Romanian Institute for Research on National Minorities in Cluj-Napoca (ISPMN), Mapping of Roma communities in Romania²⁸ which attempted to estimate the number of vulnerable persons threatened by evictions.

42. The NCCD found in its decision of 2011 that the construction of a wall in Baia Mare earlier that year to separate Roma from the majority population constituted an act of discrimination and the municipality was fined 6 000 RON. The decision of the NCCD²⁹ was upheld in the High Court of Cassation and Justice of Romania. The imposition of a fine did not alter the situation and the wall is standing in 2017. The mayor of Baia Mare who ordered the construction of the wall, was arrested on corruption charges in April 2016, yet although incarcerated, he was re-elected with a 70% majority to his post in local elections of 2016.³⁰ Incredibly, the town of Baia Mare applied to be the European Capital of Culture in 2021.³¹

Recommendations

43. The Advisory Committee strongly recommends that the authorities regularly evaluate and review the implementation of the National Roma Inclusion Strategy and accompanying action plans for the inclusion of Roma, in close consultation with representatives of this community, with a view to assessing their impact in promoting the full and effective equality of Roma, and strengthening them wherever necessary. It also urges the authorities at all levels to promptly make specific budgetary provision allowing the implementation of the national, county and municipal measures for the inclusion of Roma.

44. The Advisory Committee asks the authorities to review the Housing Law with a view to introducing an obligation to provide alternative housing to persons being evicted. The authorities should ensure that, when Roma inhabitants are relocated from dwellings unsuitable for habitation, the persons concerned participate effectively at all stages of the process and that adequate alternative accommodation is provided without delay. No relocation should lead to segregation of Roma from the rest of society. Particular attention must be paid to families with children in order to ensure that such relocations do not restrict the right of access of children to education.

²⁷ Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Romania from 31 March to 4 April 2014, p. 29, available at <https://rm.coe.int/16806db83b>.

²⁸ ISPMN Research Report, Mapping of Roma communities in Romania.

²⁹ See decision of the National Council for Combating Discrimination No. 439/15.11.2011.

³⁰ Romania-Insider.com, Romania's local elections: Arrested city mayor reelected with 70% majority, 6 June 2016, available at www.romania-insider.com/romania-arrested-city-mayor-reelected-70-majority/.

³¹ See Business Review, Why should Baia Mare be the European Capital of Culture, 1 July 2016, available at www.business-review.eu/news/why-should-baia-mare-be-the-european-capital-of-culture-interview-with-vlad-tausance-111243; also BBC report, Roma families in Romania 'enclosed' by new wall, available at www.bbc.com/news/av/world-europe-18723757/roma-families-in-romania-enclosed-by-new-wall.

45. The Advisory Committee calls on the authorities to increase efforts to prevent and to combat the inequality and discrimination suffered by the Roma. The authorities must continue their efforts, in particular at local level, to improve the employment opportunities of the Roma and to promote their integration into society.

Article 5 of the Framework Convention

State support for the preservation of the cultures of national minorities

46. The Advisory Committee welcomes the authorities' continued efforts to support the cultural activities of national minorities. In 2017, 105 million RON have been disbursed among the organisations of minorities represented in the CNM, up from 73 million RON in 2011. Organisations representing Hungarian, German, Roma and Ukrainian minorities continue to benefit most from these funds.

47. In addition, the Department for Interethnic Relations (DIR) allocates an annual budget for cultural projects, open to all national minority organisations, whether they are represented in the CNM, or not. In 2017, this funding amounts to 2 million RON. The Advisory Committee notes that the funding available under this scheme is very limited, as compared to the funding disbursed to organisations represented in the CNM and does not allow for the development of cultural projects by other organisations of national minorities. It contributes to the monopolisation of activities by organisations represented at the CNM. Furthermore, all national minority organisations can apply for funding allocated to support cultural projects disbursed by the Ministry of Culture,³² including those financed under the programme Promoting diversity in culture and art within the European cultural heritage, established in the framework of the EEA Financial Mechanism.³³

48. The substantial funding disbursed among organisations participating in the work of the CNM allows them to develop activities in the field of culture and education, and enables periodic publications in languages of national minorities and in Romanian. It also covers the costs of employing staff necessary for the implementation of cultural activities.³⁴ Funding provided by the central authorities is supplemented at the local level with in-kind contributions of local and regional authorities.

49. The National Centre for Roma Culture, set up in 2003, and subsidised by the Ministry of Culture aims to provide invaluable information on the history, traditions and culture of the Roma and serves as a focal point for cultural and awareness-raising projects. The Advisory Committee warmly welcomes the plan to establish a Museum of Jewish Culture in Bucharest, with a similar purpose. Cultural projects of all national minorities have been a part of the Dialogue of Civilizations programme and are included in various exhibitions, fairs,³⁵ festivals and workshops.

³² Ministry of Culture disburses such funding through its subordinate Administration of the National Cultural Fund (ANCF).

³³ See state report, p. 28.

³⁴ Ibid, Annex 10, p. 1-12.

³⁵ Ibid, p. 29.

50. The Advisory Committee notes that the funding system, as it has existed over the last decade, favours the one organisation of each national minority which secures a seat within the CNM, and seems to adequately meet the needs of less numerous minorities, albeit at the cost of uniformisation and monopolisation of activities. Such considerations may not be of primary concern to national minorities with few members and limited capacities to implement projects. The Advisory Committee notes nonetheless a divergence of views appearing within less numerous national minorities and signs of contesting the established status quo. Within the more numerous national minorities, the problem of monopolisation and centralisation of resources and decision making is more acute and generates tension within these groups.

51. In the counties of Covasna and Harghita, and a part of the Mureş County, persons belonging to the Hungarian national minority face particular problems related to preservation of their identity and cultural heritage. In particular, the authorities steadfastly refuse any reference to the name of 'Szeklerland', its symbols and traditions. The Advisory Committee regrets to note the courts' refusal to register associations, such as *Pro Turismo Terrae Siculorum*, on the grounds that 'Szeklerland' is not a legally recognised administrative unit. The Advisory Committee find this most surprising given that organisations invoking other historic names such as Bucovina or Banat³⁶ do not encounter such obstacles.

52. The authorities, having initiated it in 2015, have subsequently failed to present the documentation required for recognition by UNESCO as non-material heritage of humanity of an annual Whitsunday pilgrimage to Şumuleu Ciuc in the Harghita County practiced by a very large number of persons belonging to the Hungarian national minority. The Advisory Committee finds this regrettable.

Recommendations

53. The Advisory Committee calls on the authorities to strengthen their efforts to provide adequate financial support, in particular by making it more accessible to different organisations within each national minority community for their cultural initiatives.

54. The Advisory Committee invites the authorities to engage actively in a dialogue with local representatives of the Hungarian minority from the Covasna, Harghita and Mureş counties on measures to be taken to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Restitution of property and assets

55. The Advisory Committee notes that restitution of the properties nationalised during the communist era in Romania has not been satisfactorily resolved. Following the pilot judgment of the European Court of Human Rights in the case of *Maria Atanasiu and Others v. Romania*, delivered on 12 October 2010, in which the court requested "the adoption of measures capable of affording adequate redress to all the persons affected by the restitution laws", the Committee of Ministers has been supervising the adoption of general measures which would systematically address the problem of restitution of property. Some progress has been

³⁶ E.g. *Asociația Probus* in Bucovina www.probusinbucovina.ro/, *Asociația Pentru Turism Bucovina* www.bucovinaturism.ro/contact/, *Asociația Civică Banat* <https://acb.org.ro/despre-noi/>.

achieved with the enactment of a law reforming the reparation mechanism³⁷ which came into force on 20 May 2013, and the rules for the application of the law which entered into force on 29 June 2013.

56. Moreover the Advisory Committee observes that according to Hungarian national minority representatives some 4 500 out of 30 000 listed buildings, constituting material heritage of Romania, are connected with the Hungarian national minority. Regrettably, many such buildings are in poor (or very poor) condition, are left unattended and have not been properly secured due to the state of legal uncertainty surrounding property rights. Long³⁸ and costly court procedures³⁹ compound the problem and many buildings have in the meantime been damaged beyond repair.

57. One such protracted legal procedure concerned the Batthyaneum Library and the Astronomy Institute in Alba Iulia and resulted in the European Court of Human Rights ruling that it “was unable to discern legitimate justification for the State’s prolonged failure to act” and held that “the uncertainty affecting the applicant association for 14 years with regard to the legal status of the property claimed by it was all the more incomprehensible in view of the cultural and historical importance of the assets in question”.⁴⁰

Recommendation

58. The Advisory Committee urges the authorities to process pending cases concerning the restitution of property without delay.

Article 6 of the Framework Convention

Tolerance and intercultural dialogue

59. The Advisory Committees welcomes efforts made by the authorities, including the National Council for Combating Discrimination (NCCD) and the Advocate of the People (Ombudsperson), to promote interethnic understanding in society. Most national minority representatives report an overall respectful attitude prevailing between the majority and most minority groups and praise the positive climate. Efforts of the authorities to promote minority cultures, education, and particular steps taken to facilitate representation of national minorities in parliament (with the possibilities offered by lowering of the electoral threshold in elections for representatives of national minorities) are widely recognised and appreciated (see also under Article 15). Generally, representatives of national minorities consider that anti-Semitic prejudice and stereotypes in society are not widespread.

60. Notwithstanding these efforts, there is a noticeable perception of persisting xenophobia and intolerance directed in particular against the Roma and antagonism against the Hungarian minority. The Advisory Committee notes with deep concern that despite the

³⁷ Law No 165/2013 on The Measures to Complete the Compensation Process in the Form of Restitution in Kind or Equivalent, in the Case of Real Estate Confiscated Abusively During the Communist Regime of Romania, was passed by the parliament on 16 April 2013 and took effect on 20 May 2013.

³⁸ Addendum to the Democratic Alliance of Hungarians in Romania (DAHR) Parallel Report, p. 12, available at http://rmdsz.ro/uploads/fileok/dok/addendum_parallelriport_2017_04_03.pdf.

³⁹ Claimants seeking restitution are required to pay a stamp duty equivalent to 10% of the estimated value of the property.

⁴⁰ ECHR judgment in the case of *Catholic Archdiocese of Alba Iulia v. Romania* (application no. 33003/03) (French).

resolute stance of the NCCD, court rulings and statements from the authorities, measures to combat racist incidents advocated by the European Commission against Racism and Intolerance (ECRI)⁴¹ have not diminished the number of xenophobic and racist acts in the public arena.

61. Overall, it is welcome that far-right political parties are not successful in contesting national elections. However, the Advisory Committee is particularly concerned that intolerant language has over the years entered mainstream political discourse.⁴² Alarming, it has to be noted that negative stereotypical portrayal of Roma and exacerbated nationalism brings a measure of electoral success to populist political parties, and even more respectable political organisations resort to using anti-Roma and anti-Hungarian rhetoric. The Advisory Committee finds this trend very worrying, as instead of seeking to build a cohesive and tolerant society, politicians perpetuate divisions which are detrimental to finding solutions to problems. In the longer run, by shifting the threshold of acceptable discourse, it may lead to an emergence of xenophobic extremist political movements.

62. The Advisory Committee is also concerned about continuing reports indicating that racism and anti-Hungarian sentiment continue to be a negative undercurrent at sports events in Romania. In spite of a number of campaigns such as “Racism Breaks the Game” (*Rasismul strică fotbalul*), participation of Romanian football teams in the Europe-wide campaign “Let’s Kick Racism Out of the Stadiums” and the declared clampdown by the authorities, the number of cases of racial abuse is alarmingly high.⁴³ Such unacceptable behaviour is not limited to football stadiums, but has been seen also during other sports events. For example, fans of the basketball team *CSU Atlassib Sibiu* displayed during a game with *BC Târgu Mureş* a banner with sexually-explicit insults directed at ethnic Hungarians and repeatedly chanted “Hungarians, out of the country”.⁴⁴ The Advisory Committee welcomes that following this incident the NCCD took action and imposed fines on *CSU Atlassib Sibiu* and the Romanian Basketball Federation.⁴⁵

63. Some decisions of the NCCD have been widely discussed in the media and society at large, contributing to better understanding of discrimination issues and its harmful effects on

⁴¹ European Commission against Racism and Intolerance (ECRI) General Policy Recommendations (GPR) No. 6 on Combating the dissemination of racist, xenophobic and antisemitic material via the Internet; GPR No. 12 on Combating racism and racial discrimination in the field of sport; and GPR No. 15 on Combating Hate Speech.

⁴² For example, during a televised debate ahead of the Presidential elections in 2014, one of the candidates asked one of the guests not to speak “in horses’ language”, referring to the Hungarian language. In another incident, a local councilor from Alba Iulia proposed the sterilisation of Roma women. A neo-fascist group NAT88 went as far as proposing 300 RON to any Roma woman who would get sterilised. See also *Romea.Cz*, Romania: Police investigate group offering Romani women money for sterilization” available at <http://www.romea.cz/en/news/romania-police-investigate-group-offering-romani-women-money-for-sterilization>.

⁴³ The latest of such incidents was reported on 27 May 2017 when a Nigerian footballer, playing for a 3rd league team *CS Millenium Giarmata* left the field during the match with *CS Performanța* at Ighiu due to supporters’ behaviour. See *Caz revoltător de rasism în fotbalul românesc: Un fotbalist nigerian a părăsit terenul în timpul meciului din cauza comportamentului suporterilor*, available at www.b1.ro/stiri/sport/caz-revoltator-de-rasism-in-fotbalul-romanesc-un-fotbalist-nigerian-a-parasit-terenul-in-timpul-meciului-din-cauza-comportamentului-suporterilor-186915.html (in Romanian).

⁴⁴ NetRangers Against Intolerance, Annual Report On Hate Speech in Romania 2014 – 2015, p 23, available at www.activewatch.ro/Assets/Upload/files/annual%20report%20on%20hate%20speech%20in%20romania%202014%202015.pdf.

⁴⁵ NCCD Decision 719 of 3 December 2014.

society as a whole. The Advisory Committee notes in particular decisions taken in 2016, imposing fines on *Radio Zu* commentators for making racist “jokes” during the football match between Romania and the Congo which “created a hostile, degrading and humiliating atmosphere for the African people”, fining a newspaper for publishing advertisements humiliating and discriminating Roma and fining a hospital in Cluj-Napoca for failing to communicate a diagnosis for a minor child to her parent in a language they know. Also in 2016, the High Court of Cassation and Justice (HCCJ) upheld a decision of the NCCD imposing a fine on the then President Traian Băsescu for making a degrading statement injurious to the image of the Roma.

64. The Advisory Committee welcomes that both the NCCD and the courts have taken steps to combat hate speech on the internet. In February 2012, the NCCD took action and fined a Facebook user for “nationalist propaganda, being detrimental to human dignity and creating a degrading, humiliating and offensive atmosphere”. This decision was later upheld by the Târgu Mureş County court in January 2013 which held that:

The use of the 'Arbeit macht frei' slogan in a public space or in a publicly accessible space, [...] causes with no doubt an association with feelings of contempt, repudiation, intolerance [...] [I]t cannot be held that by posting the message there was no intent to violate human dignity as long as [...] the use of this slogan, [...] proves his intolerance toward the civil rights of the protesters, with the consequence of violating their dignity [...]. The Facebook social network cannot be equivalent, in terms of controlling the sent messages, to an email box. His personal Facebook profile, even if accessible only to his friends, so to a small group of people, remains public, as any 'friend' can distribute the information posted by the proprietor of the page, a possibility the complainant was aware of.

This sentence was upheld by the HCCJ in December 2014.⁴⁶

Recommendations

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

66. The Advisory Committee urges the authorities to take a firm stance against and condemn racist, xenophobic and anti-Roma language in political discourse and in the media.

67. The authorities should also take decisive action against racist and xenophobic acts perpetrated prior, during and after sports events. Measures should be taken to increase public awareness of the problem and encourage sports professionals and fans to condemn racist attitudes and behaviour.

Efforts to combat hostility or violence on ethnic or racial grounds

68. The new Criminal Code, which entered into force in 2014, introduced in Section 369 a new definition of incitement to hatred or discrimination by deleting the list of protected grounds and providing that “[I]nciting the public, using any means, to hatred or discrimination

⁴⁶ The Association for the Defence of Human Rights in Romania – the Helsinki Committee Personal Facebook Pages Are Public Space in Romania, available at www.liberties.eu/en/news/romania-facebook-profiles-are-public-space.

against a category of individuals shall be punishable”.⁴⁷ Section 77 (h) of the Criminal Code⁴⁸ specifically refers “to race, nationality, ethnicity, and language” as aggravating circumstances that judges are required to take into account when sentencing offenders. The Advisory Committee welcomes the extension of racial motivation as an aggravating circumstance to cover all criminal offences under the Criminal Code.

69. Furthermore, it is welcome that in 2013, changes were introduced to the Ordinance No. 137/2000, with the view to harmonising national anti-discrimination legislation with the provisions of EU Council Directive 2000/43/EC,⁴⁹ by shifting the burden of proof and limiting the scope of exceptions which were not to be considered as discrimination.⁵⁰ Finally, it is noted that Law No. 217/2015 amended and supplemented Government Emergency Ordinance No. 31/2002 on prohibiting organisations and symbols with fascist, racist or xenophobic character and the worship of persons guilty of crimes against peace and humanity, commonly referred to as the “anti-legionary law”.

70. The national police have taken steps to build trust among its members and the minorities. Efforts to recruit policemen from different ethnic backgrounds, including the Roma, are welcome. In this context, the Advisory Committee notes with regret that the practice to move officers around the country impacts negatively on possibilities for persons belonging to national minorities to use their languages in contacts with the police. The Advisory Committee recalls in this context that Romania, when ratifying the European Charter for Regional or Minority Languages, specifically undertook an obligation of Article 10(4)c in respect of ten minority languages, according to which Romania aims to ensure “compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used”.⁵¹ The Ministry of Administration and Interior, the police, the Prosecutor's Office and the Superior Council of

⁴⁷ Criminal Code of Romania (Law No. 286 of 17 July 2009 as amended by Law No. 27/2012, Law No. 63/2012 and Law No. 187/2012, which entered into force on 1 February 2014, available at www.legislationline.org/documents/section/criminal-codes/country/8 (in Romanian); Article 369 “Incitement to hatred or discrimination: Inciting the public, using any means, to hatred or discrimination against a category of individuals shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine”.

⁴⁸ Section 77 “Aggravating circumstances”: “The following constitute aggravating circumstances: [...] (h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals”.

⁴⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁵⁰ Articles 9 and 13 (2) of Ordinance No. 137/2000 containing exceptions were repealed because they provided exceptions.

Article 9 (repealed): “The provisions of Art. 5-8 may not be interpreted as restricting the right of the employer to refuse hiring of a person which does not meet the usual requirements and standards in the field, as long as the refusal is not an act of discrimination under this Ordinance.”

Article 13 (2) (repealed): “The provision of par. (1) shall not be construed as restricting the right of the authorities to implement the rationalization and land-use plans, as long as the movement is made according to the law, and the measure taken is not determined by the belonging of the concerned person or group of persons to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category, respectively because of their beliefs, gender or sexual orientation.”

⁵¹ States Parties to the European Charter for Regional or Minority Languages and their regional or minority languages available at <https://rm.coe.int/16806dc1e8>.

Magistracy, all collect hate crime data. Following the entry of the new Criminal Code, Romania started to provide information on hate crimes to the Office for Democratic Institutions and Human Rights (ODIHR).⁵² Data for 2014 shows 25 hate crimes recorded by police and 20 ensuing prosecutions. In 2015, there were 15 recorded hate crimes and 24 prosecutions.

71. The Advisory Committee notes that these numbers seem to be quite low, not reflecting the media and NGO reports. Interlocutors of the Advisory Committee claimed that such low numbers are due to the fact that victims of hate crimes, including the Roma, remain highly reluctant to approach the police as they do not trust that their rights and concerns will be adequately considered and protected. Interlocutors of the Advisory Committee assert that police misconduct and ethnic profiling are not uncommon, but remain unreported. The NGO Roma Center for Social Intervention and Studies (CRISS) reports to have documented 48 cases of police brutality against Roma⁵³ in the years 2006-2015, which led to seven deaths and 186 cases of injury, necessitating a total of 650 days of hospitalisation. The CRISS report asserts that there have been no convictions at the national level in any of the cases it intervened in, in part because of prosecutorial decisions not to send the cases to court.⁵⁴ The Advisory Committee notes that there has been no final verdict in the 2014 case of the police officer George Stefan Isopescu who was sentenced in the first instance by the Bucharest Tribunal to seven years' imprisonment for aggravated battery leading to the death of a 26-year-old Roma man, Daniel Gabriel Dumitrache. The case is pending the appeal lodged with the Bucharest Court of Appeal.

72. Furthermore, the Advisory Committee notes an arson attack and mob violence against Roma in Gheorgheni, in the Harghita County, which occurred on 31 March 2017, following an alleged theft by Roma children. According to eyewitness reports, in five locations, Roma families were dragged from their homes and beaten while their dwellings were set alight. The Advisory Committee is alarmed about the alleged collusion of the local authorities in Gheorgheni, who apparently blamed the arson on "Roma aggression" and claiming that the arson attack "is a consequence of local Roma regularly begging, sending their children to steal and even making one city shopping centre a 'place of terror'".

Recommendations

73. The Advisory Committee urges the authorities to ensure that more vigorous, speedy and effective action be taken to prevent, investigate and prosecute offences committed with racial or xenophobic motive, and to provide for constant monitoring of this phenomenon within the society.

⁵² OSCE Participating States have committed themselves to: "nominate, if they have not yet done so, a national point of contact on hate crimes to periodically report to the ODIHR reliable information and statistics on hate crimes", to "collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed." (MC Decision No. 9/09), available at <http://hatecrime.osce.org/what-dowe-know/our-mandate>, OSCE ODIHR Hate Crime Reporting, available at <http://hatecrime.osce.org/romania>.

⁵³ Romani CRISS *Abuzul oficialilor responsabili cu aplicarea legii în comunitățile de romi din România*, available at <http://drepturile-omului.info/wp-content/uploads/2015/06/Abuzul-oficialilor-responsabili-cu-aplicarea-legii-i-CC%82n-comunita%CC%86t%CC%A6ile-de-romi.pdf> (in Romanian).

⁵⁴ United States Department of State 2016 Country Reports on Human Rights Practices – Romania, available at www.refworld.org/country,,,ROM,,58ec89dd13,0.html.

74. The Advisory Committee further asks the authorities to investigate promptly and in a transparent manner all cases of alleged police abuse and misconduct, so as to ensure that the public, including the Roma, have confidence in the impartiality and effectiveness of the complaints mechanism in cases regarding police abuse

75. The authorities should take all necessary measures to investigate the circumstances of the arson attack in Gheorgheni and bring the perpetrators to justice.

Article 8 of the Framework Convention

The right to manifest one's religion or belief

76. The Advisory Committee notes the information contained in the state report,⁵⁵ according to which out of a total number of 14 814 demands for restitution submitted by the representative of the religious cults, 4 862⁵⁶ cases have been solved and 9 952 are still pending. As regards the demands submitted by the communities of persons belonging to national minorities, a total number of 2 155 demands have been submitted, out of which 787 have been solved and 1 368 were still pending. It has to be noted in this context, that many religious properties which belonged to different Autocephalic Orthodox churches before World War II remain under the authority of the Romanian Orthodox Church in line with its bylaw which proclaims that "the Romanian Orthodox Church is the Church of the Romanian people and encompasses all Orthodox Christians in Romania and the Romanian Orthodox Christians abroad".⁵⁷

Recommendation

77. The Advisory Committee calls on the authorities to complete the process of restitution of property to religious communities without further delay.

Article 9 of the Framework Convention

Access of persons belonging to national minorities to the media

78. The Advisory Committee notes that radio and television channels continue to broadcast a wide array of programmes for or about national minorities. Three dedicated departments for programming in the Hungarian language, German language and in the languages of other minorities produce programmes broadcast by all channels of the public Romanian Television Society (TVR). In particular, the TVR3 channel covers subjects related to local communities and is exclusively produced by the regional studios in Cluj-Napoca, Iași, Timișoara, Craiova, and Târgu Mureș covering a wide range of issues of interest to national minorities and in the languages of national minorities. The Advisory Committee further notes that a representative of the CNM sits on the National Audiovisual Council (CNA).

79. Overall, the programmes in Hungarian and German languages make up for almost 3% of the total content on TVR1 channel and 12% on the TVR3 channel. In particular, the Romanian

⁵⁵ Figures provided by the National Authority for the Restitution of Properties in Annex 12 to the state report.

⁵⁶ According to representatives of the Hungarian minority, until March 2017, out of a total of 14 814 applications, 7 712 cases were settled.

⁵⁷ Holy Synod of the Romanian Orthodox Church passes "Appeal to Romanian Dignity", available at www.pravoslavie.ru/english/44746.htm.

public television broadcasts in the languages of the national minorities include six hours weekly of programming in Hungarian.⁵⁸ In addition, public television broadcasts (on average) two hours weekly in German and with lesser frequency in Hebrew, Romani and Ukrainian languages.

80. The Romanian public radio broadcasts programmes in languages of national minorities both at the national and regional levels. Broadcasts which can be received all over Romania include over six hours weekly of programming in the Hungarian language and also six hours weekly in the German language. In addition, regional branches of Radio Romania continue to broadcast programmes in Armenian, Bulgarian, Croatian, Czech, German, Greek, Hungarian, Italian, Romani, Russian, Tatar, Turkish, Serbian, Slovak and Ukrainian from Constanța, Cluj-Napoca, Iași, Reșița, Târgu Mureș and Timișoara. The Advisory Committee also notes that broadcasts of two hours weekly about the Roma community are aired by the *Radio România Târgu Mureș*.

81. The Advisory Committee notes however, that concerns as regards the unsuitable broadcasting hours for programmes in the languages of national minorities on public television, expressed by representatives of national minorities and noted already in the previous opinion, have only partially been addressed. For example, the most popular programme in the Hungarian language (*Observator transilvan (Erdélyi Figyelő)*) is broadcast on working days between 4 and 5 pm, too early in the day for many potential viewers.⁵⁹ In addition, given that this programme is produced and broadcast by the regional TVR station in Cluj, it does not reach viewers living outside of the area where the Cluj signal is received. The Advisory Committee notes nonetheless that programmes produced by the Romanian Television Society can be viewed online free of charge.

82. The Advisory Committee notes that the process of digitalisation of Romanian television and radio has progressed significantly in recent years. It is estimated that by 2016 more than half of all households have undergone a digital switchover and are now watching digital cable or satellite services.⁶⁰ The Advisory Committee notes, however, concerns expressed by some representatives of national minorities with regard to the discontinuation by some cable companies of provision of signal of channels produced in neighbouring states in languages of these minorities. Whereas the problem seems to originate with licensing fees paid by the broadcasters being connected with their local market, the Advisory Committee considers that it should be possible to include, in broadcasting or rebroadcasting licenses issued to service providers, an obligation (or an incentive) to include channels broadcasting in national minority languages.

83. The Advisory Committee notes that the CNM continues to finance periodic publications in languages of every national minority organisation participating in its work. In addition the

⁵⁸ These programmes include: *Observator transilvan (Erdélyi Figyelő)*, *Puls Clubul Criticilor (Pulzus)*, *La Ceainărie (Teaház)*, *Pe alese (Szine Java)*, *Cocktail de șlagăre (Slágerkocktél)*, *Masa rotunda (Törzsasztal)*, *Lumea creată (Teremtett Világ)*, *Atelier (Műtermemtés)*, *Limes*, *Patria spiritual (Haza a magasban)*, *Mortor ocular (Szemtanú)*, *Meleaguri, savuri și oameni, Secvențe (Pergőpek)*.

⁵⁹ State report, Annex 16, p. 5.

⁶⁰ Broadband TV News, Digital TV landmark for Romania, published on 29 February 2016, available at www.broadbandtvnews.com/2016/02/29/digital-tv-landmark-for-romania/.

Department for Interethnic Relations allocates funds for the publication of local papers in minority languages.⁶¹

84. The Advisory Committee notes that a number of local initiatives to publish newspapers in a language of a national minority have been hampered in the name of the protection from discrimination of Romanian-language speakers. In particular, the obligation imposed by the NCCD⁶² on local authorities in the Borsec municipality in Harghita County, the majority population of which is affiliated with the Hungarian minority, to ensure translation into Romanian of a local monthly paper *Források* (springs) published in Hungarian by a foundation in co-operation and with financial support of the local authorities significantly increases the cost of the publication, makes it economically unviable and limits access to media for persons belonging to national minorities. The Advisory Committee notes in this context the need for the authorities to uphold support for minority language print media which, due to their small size, are often not commercially viable.⁶³ However, given that Romanian language speakers are in a minority situation in the Borsec municipality, the local authorities should also seek to provide information on the local level in Romanian.

Recommendations

85. The Advisory Committee invites the authorities to consider including clauses in future broadcasting or rebroadcasting licenses issued to service providers that would increase availability of programming in languages of national minorities, in particular as regards less numerous national minorities who do not benefit from locally produced content. It also encourages them to take the necessary measures to provide adequate radio and television broadcasting at suitable times.

86. The authorities should also take the necessary legislative and administrative measures which would guarantee the possibility for local newspapers to be published in languages of national minorities with the support of local authorities, without impeding access of speakers of other languages to information.

Article 10 of the Framework Convention

Use of minority languages in dealings with local administrative authorities

87. The Advisory Committee recalls that the Constitution of Romania guarantees the right to use a minority language in relations between persons belonging to national minorities and “the authorities of the local public administration and deconcentrated public services” in areas inhabited by a substantial number of persons belonging to that minority.⁶⁴ The Law on Public

⁶¹ State report, Annex 15, p. 1.

⁶² Decision of the National Council for Combating Discrimination No. 274 of 10 June 2015.

⁶³ ACFC Third Thematic Commentary No. 3 on the language rights of persons belonging to national minorities under the Framework Convention (2012), para. 47, p. 16.

⁶⁴ According to the Romanian administrative system, national public services, such as the National Agency for Fiscal Administration, the National Agency for Employment, the National House of Public Pensions, the National Customs Authority, the National Public Health Agency, the National Institute of Statistics, the Romanian Police, the National Environmental Protection Agency, the Romanian Road Authority - A.R.R. and many others, operate at the county level through branches providing “deconcentrated” services to the population. Text of the Law is

Administration No. 215/2001 (last modified on 27 March 2017) provides for the use of minority languages in administrative territorial units where a minority represents at least 20% of the population, according to the last census. The law secures, subject to meeting the threshold requirement, the right to persons belonging to a national minority to address local authorities and employees of local and county councils in the minority language, in writing or orally, and to receive an answer both in Romanian and in their national minority language.⁶⁵ Furthermore the law stipulates the obligation on the part of local public authorities to employ persons fluent in the minority language to posts whose holders come into contact with the public. Finally, should the share of a given minority population fall below the threshold of 20% in a successive census following the adoption of this law, Article 131 of Law No. 215/2001 stipulates maintenance of the status quo, as it existed according to the most favourable census' results.

88. The Advisory Committee notes that in spite of the fact that the legislative provisions on the use of minority languages in dealings with local authorities entered into force over fifteen years ago, there are no standardised translations of administrative forms and other printed documents into national minority languages. Efforts to develop such documents undertaken by the government-run Romanian Institute for Research on National Minorities (ISPMN), in particular in the bilingual Romanian-Hungarian format, are highly appreciated. It has to be noted, however, that these forms are of indicative character and are not given official status by the relevant authorities.

89. The Advisory Committee notes that among the 3 181 municipalities in Romania,⁶⁶ there are altogether 488 municipalities⁶⁷ where persons belonging to a national minority constitute more than 20% of the inhabitants. Among these, there are 325 municipalities where persons belonging to the Hungarian national minority constitute more than 20% of the population. In 102 of these municipalities (located in the Harghita and Covasna counties), persons belonging to the Hungarian minority constitute the majority. The 20% threshold is also met in 148 municipalities inhabited by the Roma, 16 inhabited by persons belonging to the Ukrainian national minority, eight inhabited by Russian-Lipovans, five inhabited by Germans, four by Serbs, three by Slovaks, two by each of the following nationalities: Czechs, Croats and Turks and one each by Bulgarians, Greeks and Poles.⁶⁸

90. The Advisory Committee notes with regret that, in practice, the right to use one's minority language in dealings with local authorities in the administrative territorial units where the threshold has been attained is not always respected. A survey conducted in 2016 by the Democratic Alliance of Hungarians in Romania found that of all the municipalities contacted, only 130 provided replies on the possibility to use the Hungarian language in relations with the relevant public administration authorities. Thirteen of these answers were written exclusively in Romanian and 51 declared that no normative decisions of the local councils were translated



available at www.romaniaconsulting.ro/wp-content/uploads/2015/02/Adm-Pb-2014-11-04-ancoro-l-215-2001.pdf (in Romanian).

⁶⁵ Article 90 paragraph 2 of Law No. 215/2001 on public administration.

⁶⁶ Eurostat database of Local Administrative Units available at <http://ec.europa.eu/eurostat/web/nuts/local-administrative-units>.

⁶⁷ Data compiled by the Institute for Research of National Minorities in Cluj.

⁶⁸ Among these municipalities, there are 26 where the figures of both Hungarians and the Roma and four municipalities where the figures of both Hungarians and Germans, are above the 20% threshold.

into the Hungarian language. The Advisory Committee was informed by 33 municipalities that the agenda for meetings is not translated into the Hungarian language either.

91. Furthermore, although Article 131 of Law No. 215/2001 expressly states that the provisions of the law remain in effect if the share of a given minority population falls below the threshold established by the law, in all 15 territorial units where the proportion of persons belonging to the Hungarian minority decreased between censuses of 2001 and 2011 under 20%⁶⁹ the use of the Hungarian language all but ceased in contacts with local public administration in these settlements and none of them translate their official documents, or issue forms in the Hungarian language.

92. Similar conclusions were reached in 2012 by the National Council for Combating Discrimination, which analysed the fulfilment of the obligation to translate decisions and communications of public interest of over 60 institutions and local authorities and publish them on their web pages. The NCCD found that no institutions complied with this legal obligation to ensure equal access to public information in Hungarian for Romanian citizens belonging to the Hungarian national minority.⁷⁰

93. The Advisory Committee notes that the condition for persons belonging to national minorities to reach a statutory threshold required to trigger access to a number of rights, are not met in a number of large municipalities, although the number of such persons is - by all account - "substantial in number", as stipulated in Article 10(2) of the Framework Convention.⁷¹ Proposals have been conveyed to the Advisory Committee that in municipalities where the number of citizens belonging to a national minority reaches a certain numerical threshold, for example 5 000 persons, the local and decentralised authorities should be required to apply the same provisions as are currently binding on those authorities where the proportional threshold is met. In this context, the Advisory Committee recalls that it has consistently recommended a flexible and context-specific approach with respect to numerical thresholds for the applicability of minority rights.⁷²

⁶⁹ These administrative units are: Rădești in the Alba County, Chișineu-Criș in the Arad county, Oșorhei, in the Bihor county, Reteag in the Bistrița-Năsăud county, Budila and Rupea in the Brașov county, Chinteni, Cătina, Cojocna and Florești in the Cluj county, Baia Sprie in the Maramureș county, Arduș in the Satu Mare county and Giera, Dumbrăvița and Uivar in the Timiș county, see Hungarian National Council of Transylvania and Szekler National Council Shadow Report, p. 12, available at http://www.emnt.org/admin/data/file/20170627/hnct-sznc-shadowreport_final.pdf.

⁷⁰ The NCCD ruled that the lack of a Hungarian translation of the web pages, which contain information of public interest, constituted an act of discrimination according to Article 2(1) of Government Ordinance No. 137/2000, as revised. These breaches were found in respect of the prefects in Mureș, Satu Mare, Bihor and Sălaj counties, the county councils of Satu Mare, Bihor and Sălaj, the local public authorities of Covasna, Hăghig, Toplița, Gălăuțaș, Tulgheș, Voșlobeni, Luduș, Adămuș, Albești, Băgaciu, Band, Breaza, Ceășu de Câmpie, Cristești, Gănești, Livezeni, Sâncraiu de Mureș, Sânpaul, Sărmașu, Șincai, Voivodeni, Tășnad, Arduș, Bogdand, Botiz, Căuaș, Cehal, Craidorolț, Culciu, Halmeu, Micula, Odoreu, Orașu Nou, Petrești, Pir, Săuca, Urziceni, Vama, Viile Satu Mare, Marghita, Abrămuș, Balc, Borș, Chislaz, Curtuiușeni, Finiș, Tileagd, Cehu Silvaniei, Șimleu Silvaniei, Almașu, Benesat, Crasna, Crișeni and Fildu de Jos, see Democratic Alliance of Hungarians in Romania (DAHR) Parallel Report, pp. 46-47, available at http://www.dahr.ro/uploads/fileok/dok/report_kk_05_04_EN-1.pdf.

⁷¹ For example, 15 396 inhabitants of the municipality of Arad, corresponding to 9.7% of all inhabitants, declared Hungarian ethnicity in the last census. Lack of access to minority rights by such a large group of persons is perceived by many representatives of the Hungarian national minority as a major flaw in the current legislation.

⁷² ACFC Thematic Commentary No. 4 (2016), para 80, p. 31.

94. Efforts to employ persons speaking the minority language in municipalities where the threshold is met are hampered by complaints addressed to the courts. On a number of occasions, the courts found that introducing such a requirement in an offer of employment constitutes an act of discrimination. For example, the High Court of Cassation and Justice⁷³ considered that the condition to speak Hungarian at an average level in a job description of a general-secretary of a village hall in a municipality where 70% of the residents are Romanian citizens belonging to the Hungarian minority was discriminatory. The Advisory Committee notes in this context that the Law on Public Administration No. 215/2001 obliges local public authorities to employ persons fluent in the minority language to posts whose holders come into contact with the public in the municipalities where the threshold is met (see also under paragraph 87 above).

95. Finally, the Advisory Committee notes with concern cases of legislative initiatives which aim to undermine the right to use minority languages in public. These initiatives include a legislative proposal submitted to the Chamber of Deputies in February 2016 proposing the prohibition of the use of national minority languages before both public institutions and at meetings of local or county councils and a proposal for a “Law on the loyalty to the Romanian State”, which would sanction those who speak languages other than Romanian in public institutions. These initiatives were not supported by the government or in parliament. The Advisory Committee recognises that protection of the state language is, in itself, a legitimate aim. It notes, however, that the authorities should attempt to strike a balance between the protection of the state language and the language-related rights of persons belonging to national minorities. In particular, promotional and incentive-based measures should be favoured over any form of coercion.⁷⁴

Recommendations

96. The Advisory Committee reiterates its call on the authorities to ensure that the legal provisions on the use of minority languages in dealings with local administration are fully implemented.

97. The Advisory Committee invites the authorities to consider, in consultation with representatives of national minorities, the adoption of flexible measures which would facilitate the use of minority languages in dealings with local administrative authorities in these municipalities where persons belonging to national minorities live in substantial numbers, as prescribed in Article 10(2) of the Framework Convention.

98. The authorities should take steps to facilitate the use of minority languages in relations with administrative authorities by establishing in bilingual formats standardised certified administrative forms, both in printed form and online.

⁷³ Decision No. 6324 of 25 September 2013.

⁷⁴ ACFC Thematic Commentary No. 3 (2012), para. 53, p. 17.

Article 11 of the Framework Convention

Use of minority languages to indicate place names

99. The situation as regards the legislative framework governing the display of topographical indications in minority languages has not changed since the adoption of the last opinion of the Advisory Committee. The Advisory Committee recalls that the exercise of the right to display bilingual signs and indications of place names is conditioned on the number of persons belonging to the national minority constituting no less than 20% of all residents of the municipality. The Advisory Committee notes that Article 76(4) of Law No. 215/2001 refers to inscription of the names of municipalities and institutions but does not explicitly require the display of street names in a bilingual format.

100. The Advisory Committee regrets to note that the state report provides no comprehensive figures on the number of municipalities which apply the legal provisions and display bilingual signs. It welcomes nonetheless information provided in the state report on the number of municipalities where bilingual or multilingual signage has been maintained in spite of the fall of the minority population below the 20% threshold. Such signage in bilingual format has been kept in municipalities in the Bacau County, Arad County, Constanța county and the Times County.⁷⁵ Against this generally positive background it must be noted that there have been cases, for example in Tigmandru (in the Mureș County) and Tulgheș (in the Harghita County) the removal of bilingual place names and their replacement by Romanian-language ones only. The Advisory Committee finds such practice regrettable and contrary to the spirit of the Framework Convention.

101. The Advisory Committee further notes that in a number of municipalities inhabited by a substantial number of persons belonging to the Hungarian minority (and where the 20% threshold has been met), such as Satu Mare, Carei, Oradea and Tășnad,⁷⁶ street signs remain monolingual (in the Romanian language only), or as in the case of Târgu Mureș partially translated into the Hungarian language by adding words 'street' and 'square' in Hungarian to Romanian language street name signs. The Advisory Committee notes that such partial transcription was considered in 2014 by the National Council for Combating Discrimination (NCCD) to constitute discrimination. This decision of the NCCD was subsequently overturned by the Court of Appeal and an appeal to the High Court of Cassation and Justice submitted in June 2015 is currently pending.

102. The Advisory Committee welcomes the decision of the mayor of Cluj-Napoca not to appeal the ruling of the court of first instance of 21 February 2017, which ordered him to install bilingual (Romanian and Hungarian) place name signs in Cluj-Napoca.⁷⁷ This ruling addresses in fact the situation of municipalities where the share of a national minority dropped below the 20% threshold between the 2002 and 2011 censuses. The Advisory Committee underlines in

⁷⁵ State report, p. 42.

⁷⁶ The share of the Hungarian language speakers in Târgu Mureș is 44.1%, in Satu Mare - 36.7%, in Carei – 56.6%, in Oradea – 23.7% and in Tășnad 43.4% of the total population.

⁷⁷ MRG welcomes decision of Romanian court ordering installation of bilingual place signs in capital of Transylvania, urges authorities to abide by ruling without further delay, available at <http://minorityrights.org/2017/03/24/mrg-welcomes-decision-romanian-court-ordering-installation-bilingual-place-signs-capital-transylvania-urges-authorities-abide-ruling-without-delay/>.

this context the importance of promoting bilingual signs, as this conveys the message that a given territory is shared in harmony by various population groups.⁷⁸

Recommendation

103. The Advisory Committee asks that the authorities take more proactive measures in order to ensure that the provisions of Article 11(3) of the Framework Convention are effectively implemented in all municipalities meeting the statutory threshold. It also encourages them to take a flexible approach over the introduction of signs displaying street names in languages of national minorities.

Article 12 of the Framework Convention

Multicultural and intercultural dimension of education

104. The situation as regards the regulatory framework governing the promotion of cultural diversity in education remains unchanged. The Advisory Committee notes with interest the Intercultural Schools Project initiated in 2014 by the Department for Interethnic Relations and the non-governmental organisation *Srita* from Târgu Mureş. According to information provided in the state report, three training sessions were held in Mangalia, Văliug and Târgu Mureş in 2014 and the programme has continued on a yearly basis. The Advisory Committee welcomes such intercultural initiatives as well as pilot projects implemented across Romania.

105. The Advisory Committee recalls that it asked the authorities in its previous opinions to review the school curricula to incorporate aspects that promote the country's ethnic and cultural diversity and ensure that the majority are more aware of the history and cultural identity of minorities. It regrets in this context, that whereas representatives of the Jewish minority report positively on the inclusion of information on the contribution of Jews to Romanian society in school curricula and interethnic relations over different periods of history, no effort was made to include information on the Roma, their history, culture and traditions.

106. A number of representatives of national minorities conveyed to the Advisory Committee their perception that children belonging to the majority population do not acquire adequate knowledge through education of minorities' culture and historical perspectives. For instance, Romanian children not following a minority school curriculum seldom learn about the culture and history of national minorities in Romania. The latter is taught only as an elective subject in grade 10 in schools with instruction in the Romanian language.

107. Furthermore, the Advisory Committee notes that according to research carried out in 2016 by the Center for Legal Resources,⁷⁹ history textbooks for 7th, 11th and 12th grade omit the role of minorities in history and strengthen existing stereotypes, focus on interethnic conflict among different ethnic groups living in Transylvania before the First World War and fail to offer a fair representation of religious diversity. At the same time, history textbooks tend to

⁷⁸ ACFC Thematic Commentary No. 3 (2012), para. 67.

⁷⁹ *Analiză manualelor de Istorie (realizată pentru Centrul de Resurse Juridice de Irina Costache)* available at www.crj.ro/wp-content/uploads/2016/11/CRJ-Analiza-Manuale-Istorie-educatie-fara-discriminare.pdf (in Romanian).

focus on the Orthodox religion and fail to mention the presence of other believers in Transylvania such as the Roman-Catholics, Calvinists, Lutherans or Unitarians.

Recommendation

108. The Advisory Committee reiterates its call on the authorities to ensure that all students, irrespective of the language of education, are provided with quality information on the history and cultural heritage of national minorities as an integral part of Romanian society. Efforts aimed at promoting mutual respect and intercultural dialogue should be pursued and expanded.

Access of Roma to Education

109. The improvement of access of Roma to education constitutes one of the major fields of action under the National Roma Inclusion Strategy. The main thrust of the strategy has been placed on expanding the existing child-care facilities (kindergartens, day-care centres, etc.), development of after-school programmes and continuation of 'Second chance' programmes for Roma early school leavers, as well as of affirmative action interventions.

110. The Advisory Committee notes information provided in the state report⁸⁰ on measures taken to monitor the implementation of Order No. 1540/2007 of the Ministry of Education, Research, Youth and Sports on banning segregation of Roma children in schools and approving the methodology for preventing and eliminating this phenomenon. County school inspectorates are required to report to the Ministry of Education, Research, Youth and Sports at the beginning of each school year on measures taken to prevent Roma children being segregated when forming the preparatory grades, first grade and fifth grade by a set deadline. In cases where segregation has been established, county school inspectorates are requested to indicate concrete measures for de-segregation.

111. The Advisory Committee welcomes initiatives undertaken by the Ministry of Education, Research, Youth and Sports to assist Roma students in the education process. These include school transport as well as the financing of 400 Roma school mediators and special measures entitling 500 Roma students to enrol at tertiary education establishments. Also, the "Second Chance" programme has been set up to help young adults who have dropped out of the school system, to obtain secondary school qualifications.

112. Against this highly developed institutional background, the Advisory Committee regrets to note that Roma children continue to face difficulties in accessing education. Regardless of efforts undertaken in recent years, educational results for Roma children lag far behind those of other national minorities and the Romanian population in general. According to a survey conducted by the European Union Agency for Fundamental Rights (FRA), 22% of school-age Roma children do not attend school.⁸¹ Another study found that only 37% of Roma children between 3 and 6 years of age were enrolled in preschool as opposed to 63% of non-Roma.⁸²

⁸⁰ State report, p. 43.

⁸¹ European Union Agency for Fundamental Rights (FRA): Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States, 2014, p. 11, available at www.fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf.

⁸² EU, Education and Training Monitor 2016 Romania, p. 5, available at https://ec.europa.eu/education/sites/education/files/monitor2016-ro_en.pdf.

Official census figures corroborate this information. According to the census of 2011 only 0.7% of persons of Roma origin completed tertiary education as compared to 14.8% of the Romanian majority and 10.2% of persons belonging to the Hungarian minority. In addition, only 9.2% of Roma completed upper secondary education, compared to 42.3% of Romanians and 46.2% of Hungarians.⁸³

113. Despite measures taken by the authorities, a considerable number of Roma children continue to fail at school and drop out at an early stage. According to a study carried out by the Ministry of Education, Research, Youth and Sports, UNICEF and the *Agenția Impreună*, more than 70% of the students that drop out from school are Roma, and the causes for leaving the educational system are poverty, discrimination at school as well as the low quality of education, and the lack of human and material resources in schools. Many Roma parents do not find formal education useful, as it does not increase chances for young Roma in the labour market. Among the reasons for dropout of Roma girls are also early marriages; however, these happen only in traditional Roma communities.⁸⁴ Consequently, the share of Roma who have not completed upper secondary education stands at over 90% in Romania. Worse still, 31% of Roma view themselves as illiterate.⁸⁵

114. A report on the findings of a recent research project conducted in the school year 2015-16 by the Center for Advocacy and Human Rights in Botoșani, Iași, Neamț, Suceava and Vaslui counties found that in 81 schools out of 394 for which data was available there was, some form of segregation of Roma children. In half of the 112 municipalities surveyed there was at least one school where segregation could be observed.⁸⁶ The Advisory Committee notes in this context that the Roma Strategy envisaged that by the end of 2016 all counties will have developed de-segregation plans and legislation will have been amended to strengthen these measures, while by 2020 segregation will have been eradicated. The Advisory Committee notes that unfortunately, this first deadline was not met. Moreover, representatives of the Romani CRISS (NGO) informed the Advisory Committee about their joint application, together with the European Roma Rights Centre, to the European Commission alleging school segregation of Roma children and asking that an infringement procedure be started.⁸⁷

115. De-segregation is occasionally conducted very superficially. For example in Primary School No. 12 in Cluj-Napoca, attended by children belonging to different ethnic groups, Roma children are taught in a separate building and enter premises through a separate entrance. Reportedly, in a school in Târgu Mureș, Romanian, ethnic Hungarian and Roma children attend classes on different floors, with Roma children being taught in classes located in the basement.

⁸³ European Roma Rights Centre submission to the European Commissioner for Justice, Consumers and Gender Equality of 30 May 2016, available at www.errc.org/cms/upload/file/romania-letter-to-ec-school-segregation-in-romania-30-may-2016.pdf.

⁸⁴ CAHROM, Early and Forced Marriages in Roma Communities. Country Report: Romania – 2015, available at <https://cs.coe.int/team20/cahrom/9th%20CAHROM%20Plenary%20meeting/Item%2009%20-%20Early%20and%20Forced%20Marriages%20in%20Roma%20communities%20in%20Romania.docx>.

⁸⁵ See note 81.

⁸⁶ *Centrul de Advocacy și Drepturile Omului, Segregare școlară în Regiunea Nord-Est (Moldova)*, 2016 available at www.cado.org.ro/segregare-scolara-in-regiunea-nord-est-moldova.html (in Romanian).

⁸⁷ ERRC and Romani Criss letter to Věra Jourova, Commissioner for Justice, Consumers and Gender Equality dated 30 May 2016, available at <http://www.errc.org/cms/upload/file/romania-letter-to-ec-school-segregation-in-romania-30-may-2016.pdf>.

In other schools, according to Roma interlocutors the Advisory Committee met, Roma children placed in standard classes are relegated to last rows, are not involved in class activities and are not encouraged to follow the curriculum. When Roma children begin to lag behind the rest of the class, pressure is put on them to leave school altogether.

Recommendations

116. The Advisory Committee urges the authorities to step-up their efforts to eliminate all forms of segregation of Roma children and to include them in the mainstream education. The situation at all levels should be closely monitored in order to avoid any segregation based on ethnic affiliation.

117. The authorities should redouble their efforts to combat school absenteeism and early dropouts among Roma children. Such efforts should include the expansion and development of the long-term use of school mediators who can assist Roma children and their families in their contact and inclusion in the educational system.

Article 13 of the Framework Convention

Private education establishments

118. The Advisory Committee notes concerns conveyed by persons belonging to the Hungarian minority, caused by the threat of closing of the Rákóczi Ferenc high school in Târgu Mureş established in 2014 with the approval of the local authorities, in a building belonging to the Roman-Catholic Church and providing education in the Hungarian language. It notes in this context that in 2015, the National Anti-corruption Agency filed criminal charges concerning alleged corruption in allocation by the local authorities of funds for the renovation of the building which houses the school. This procedure is still ongoing. Furthermore, in the spring of 2017, the County School Inspectorate did not authorise enrolment of children in the 1st, 5th and 9th grades for the school year 2017-18, arguing that the school has not been properly registered with the Ministry of Education, Research, Youth and Sports.

Recommendation

119. The authorities should take urgent steps to clarify the situation of the primary and high school in Târgu Mureş run by the Roman-Catholic Church with the view to finding solutions which would allow for the continued schooling of children using the Hungarian language as the language of instruction.

Article 14 of the Framework Convention

Teaching of and in minority languages

120. The Advisory Committee notes that the Law on Education⁸⁸ remains the main legislative basis for teaching in and of national minority languages. Two basic models have been developed to meet different needs and expectations of national minorities. In schools with the national minority language as language of instruction, all subjects (with exception of the Romanian language) are taught in the language of a national minority. In “ordinary” Romanian

⁸⁸ Law of National Education No. 1/2011 available at <http://lege5.ro/Gratuit/geztsobvgi/legea-educatiei-nationale-nr-1-2011> (in Romanian).

language schools teaching of a national minority language, literature, history, traditions and religion (on a voluntary basis) can be included in the school curricula at the initiative of at least ten parents (in the case of kindergartens), 12 parents (in the case of children enrolled in primary schools and colleges) or 15 parents (in the case of upper secondary schools). The Advisory Committee notes that the Ministry of Education, Research, Youth and Sports or the County School Inspectorate are entitled to authorise opening or maintaining a class in “exceptional situations”⁸⁹ (Article 63, Paragraph 2 or 3). In practice, according to national minority representatives, such authorisations are granted on a case by case basis if the number of children is not lower than ten. In cases of smaller numbers, classes of different ages are merged. The Advisory Committee’s interlocutors fear that this might have a detrimental effect on children’s education.

121. The Advisory Committee notes that, according to official sources,⁹⁰ teaching was provided in the school year 2013-14 (the last year for which figures are available) at primary school and college level: in Hungarian (95 824 children), German (13 377 children), Romani (1 308), Slovak (470), Serbian (161), Ukrainian (150), Croatian (53) and Czech (6). In upper secondary schools, the same languages were taught with the highest number of children learning the Hungarian language (32 418 children) and German (3 629). The Advisory Committee notes that in the last five years, the number of children learning Hungarian, German and Romani languages has been growing, with the number of children learning other languages remaining steady.

122. The supply of teachers teaching minority languages seems to adequately correspond to the needs, with 7 459 teachers teaching Hungarian and 632 teachers teaching German in primary schools and colleges in the school year 2013-14.⁹¹ To cover additional costs incurred when teaching minority languages or in minority languages, the amount of subsidy allocated for each enrolled child granted to schools is increased by 20% for each child receiving education in a minority language in grades 1-4 and by 14% in grades 5-8. Additional subsidies are granted for transportation or boarding. It has to be noted, however, that according to national minority representatives, in poorer regions, local councils cannot afford or delay transmitting subsidies transmitted to them by the Ministry of Education, Research, Youth and Sports.

123. In addition to national minority language teaching organised with funds disbursed by the Ministry of Education, Research, Youth and Sports, additional tuition is arranged by associations of national minorities participating in the work of the CNM who benefit from funding allocated for their activities by the Department of Interethnic Relations (see also under Article 15). Such tuition has been organised by Turkish, Tatar and Greek organisations in the Tulcea and Constanța counties and by the Union of Poles in the Suceava County, in particular in municipalities where the number of children required to open a class has fallen below the

⁸⁹ Law of National Education, Art. 63(2) “as an exception from the provisions of par.(1), in those places where there is demand for the form of education in the maternal language of a national minority, the number of study formations may be lower than the minimum stipulated in the present law. The decision regarding the creation and operation of these study formations [...] lies with the Ministry of Education, Research, Youth and Sports, upon consultation with the board of directors of the respective educational institution”.

⁹⁰ Statistical yearbook of Romania, 2014, pp. 298-299, available at www.insse.ro/cms/en/content/statistical-yearbooks-romania.

⁹¹ Ibid.

minimum number. In this context, the Advisory Committee regrets to note that the teaching of Tatar children has been jeopardised by problems arising from the lack of representation of the Tatar minority in the CNM since the beginning of 2017.

124. It has to be noted however that, according to Hungarian minority representatives, the curriculum for teaching the Romanian language and literature in schools using Hungarian as the language of instruction was, until recently, not adapted for lower grade classes (primary schools and colleges), as provided for by the 2001 Law on Education. Regrettably, the process of adapting the curricula for upper secondary schools has not been completed and children there learn according to the standard curriculum. The absence of distinction has damaging effects. Hungarian-speaking children, who have attended schools with Hungarian language of instruction, in particular those living in areas where persons belonging to the Hungarian minority are in the majority, struggle to learn Romanian and complete their schooling without a satisfactory knowledge of the official language, thus hampering their prospects when seeking university admission. To counteract this negative outcome, Hungarian minority associations and foundations financed from Hungary have been implementing Romanian language tutorial programmes in the Harghita and Covasna counties, reportedly achieving positive examination results.

125. The Advisory Committee, while recognising that young children who start the learning process without good knowledge of the Romanian language require a special curriculum, appropriate methodology and teaching materials, considers nonetheless, that all efforts should be made to ensure that at the end of the learning process the graduates' command of the Romanian language is equivalent to their peers who follow education in Romanian. Furthermore, it is recalled that "it is equally important, as stressed in Article 14.3, that proper knowledge of the official language(s) is acquired, as the lack thereof seriously restricts opportunities for persons belonging to national minorities to effectively participate in public life, and may inhibit their access to university".⁹²

126. The Romani language continues to be taught throughout the territory of Romania both as a subject (in schools with Romanian or Hungarian languages of teaching) and as the main medium of instruction. The Advisory Committee further notes that, in 2014, 660 Roma children attended preschool kindergartens with Romani language of instruction. According to the last available figures, the number of Roma children learning the Romani language in primary schools and colleges was 1 308.⁹³ The Advisory Committee considers in this context that, given the number of Roma living in Romania, there is scope for significant expansion of Romani language teaching in the country. It notes however that schools using the Romani language of instruction should always be established as a viable alternative to general schools and not as the only option for children living in marginalised communities, and not at the expense of learning the Romanian language.

127. The Advisory Committee notes that three public higher education institutions continue to provide education in the languages of national minorities. The Babeş-Bolyai University in Cluj-Napoca provides tuition in Romanian, Hungarian and German, while the University of

⁹² ACFC Thematic Commentary No. 3 (2012), para. 72, p. 23.

⁹³ See footnote 90, p. 298.

Theatrical Arts and the Medicine and Pharmacy University in Târgu Mureş use Romanian and Hungarian languages in education. The Advisory Committee notes that representatives of the Hungarian minority continue to call for the establishment of an independent Medical Department at the Târgu Mureş Medicine and Pharmacy University using the Hungarian language.

Recommendations

128. The Advisory Committee calls on the authorities to continue monitoring the situation in consultation with the representatives of national minorities, to assess whether the existing legal framework for teaching in minority languages, and practical arrangements corresponds to actual needs and, where appropriate, take the necessary steps to address any shortcomings. The less resourceful minorities should be supported especially when they are not able to launch and support their own educational initiatives.

129. The Advisory Committee strongly recommends that the authorities introduce more flexibility when carrying out exams in Romanian language and literature at schools using national minority languages as the medium of education and ensure that the level at which the exam is administered corresponds to the curriculum used to teach the subject.

130. The Advisory Committee encourages the authorities to pursue their efforts to improve the possibility for Roma children to study the Romani language.

Textbooks, other teaching and learning materials and teacher training

131. The Advisory Committee notes the efforts of the Institute of Educational Sciences to ensure an adequate supply of textbooks and other teaching and learning materials in languages of national minorities. It notes, however, that, in particular as regards smaller ethnic groups, such as Greeks, there are no textbooks available in their languages. Also, the ongoing changes to the school curricula make existing textbooks obsolete, and put the strain on teachers and students alike. Furthermore it must be noted that numerically smaller minorities do not have the capacity to write or to translate textbooks corresponding to the requirements of the valid curricula in a limited timeframe. In this context, the Advisory Committee notes that manuals and other teaching aids produced abroad are allowed as additional teaching aids in schools. It has to be noted however, that unlike textbooks approved by the Institute of Educational Sciences, such teaching aids need to be purchased at the parents' expense.

132. Representatives of national minorities informed the Advisory Committee that overall the provision of qualified language teachers is adequate to meet the demand. In this context the Advisory Committee notes the existence of numerous faculties teaching German and Hungarian, including the Ukrainian Philology Department at the Ştefan cel Mare University in Suceava. Representatives of national minorities pointed out, however, the difficulty in identifying teachers of specialist subjects such as chemistry or biology, qualified to teach in a minority language. In some cases, teachers needed to be invited from abroad to fill in the existing gaps.

Recommendation

133. The Advisory Committee calls on the authorities to increase their efforts to recruit qualified teachers and ensure that an adequate number of teachers and of teaching and learning materials in minority languages is available at all levels of education.

Article 15 of the Framework Convention

Participation of persons belonging to national minorities in public affairs

134. The Advisory Committee notes that the single member constituency voting system for the Senate and the Chamber of Deputies, introduced in 2008, was replaced in 2015 by a proportional representation system based on party lists, with a 5% threshold for political parties and 8-10% threshold for alliances.⁹⁴ In accordance with the new electoral law,⁹⁵ specific provisions on preferential seats for representatives of national minorities have been carried over from previous legislation, allowing for election on a preferential basis, of one representative of each national minority represented in the Council of National Minorities.⁹⁶ The Advisory Committee notes with concern that revision of the electoral legislation carried out in 2015 was not a catalyst for amending the provisions on election of deputies representing national minorities. It recalls its criticism voiced already in the previous opinion⁹⁷ in which it pointed out that:

the electoral legislation favours candidates put forward by organisations represented in the Council of National Minorities over those, representing other organisations. [...] The conditions established by electoral legislation, in particular the necessity to collect, within 30 days of announcement of the election day, signatures in number not less than 15% of the total number of citizens who declared themselves in the last census as belonging to the respective minority are of particular concern.

⁹⁴ The corresponding thresholds for political alliances are: 8% for alliances of two parties, 9% for alliances of three parties, and 10% for alliances of four parties or more. See Interparliamentary Union website, available at http://www.ipu.org/parline-e/reports/2261_B.htm.

⁹⁵ Law No. 208/2015, adopted on 20 July 2015, on “the elections of the Senate and Chamber of Deputies, as well as the organization and functioning of the Permanent Electoral Authority” available at <http://legislatie.just.ro/Public/DetaliiDocument/170037> (in Romanian).

⁹⁶ Article 56

(1) of Law No. 208/2015 (unofficial translation) “Legally constituted organizations of citizens belonging to a national minority, who have not obtained in the elections at least one mandate of deputy or senator, are entitled, according to art. 62 par. (2) of the Constitution of Romania, republished, to a mandate of a deputy, if they have obtained, in the whole country, a number of votes equal to at least 5% of the average number of votes validly expressed in the country for the election of a deputy. The average number of valid votes cast in the country for the election of a deputy is the number equal to the ratio of the number of votes validly expressed at national level for all political parties, political alliances, electoral alliances or citizens' organizations belonging to national minorities who have met the condition of the electoral threshold, the valid votes cast by the independent candidates who received mandates and the total number of mandates for the Chamber of Deputies according to the annex No. 1.

(2) Candidates may apply to the organizations of citizens belonging to the national minorities represented in the Parliament.

(3) By national minority is meant the ethnicity represented in the Council of National Minorities.

(4) Candidatures and other legally constituted organizations of citizens belonging to national minorities which are of public utility and submit to the Central Electoral Bureau, within 30 days from the date of the election day, a list of members with a number of at least 15% of the total number of citizens who, at the last census, declared themselves to belong to that minority.

(5) If the number of members required to fulfil the conditions provided in paragraph (4) is more than 20,000 persons, the list of members must comprise at least 20,000 persons domiciled in at least 15 of the counties of the country and in the municipality of Bucharest, but not less than 300 persons for each of these counties and for the municipality Bucharest.”

⁹⁷ Third Opinion of the ACFC on Romania, para. 183, pp. 31-32.

In addition, the condition that organisations wishing to participate in elections had been granted by the government a 'public utility' status further reduces the possibility for open and competitive elections in respect of the preferential seats.

135. According to Article 56 of Law No. 208/2015, minority organisations that previously had no members of parliament in the parliament need to meet two conditions in order to participate in elections: (i) the organisation needs to be of "public utility", and (ii) it needs to present a list of members comprising at least 15% of the total number of citizens who declared themselves as belonging to the minority at the last census. If this number exceeds 20 thousand people, "members must include at least 20 000 people residing in at least 15 of the counties and in Bucharest, but no less than 300 people for each county and municipality Bucharest".

136. It also has to be noted that the 'public utility' status can only be granted to an association or a foundation which has been in existence for over three years. The Advisory Committee notes that all the above-listed conditions significantly restrict the possibility for persons belonging to national minorities to create associations capable of voicing their concerns and contesting parliamentary seats open to national minorities.

137. In this context, the Advisory Committee notes the unanimous judgment of the European Court of Human Rights in the case of *Danis and Association of Ethnic Turks v. Romania* delivered on 21 April 2015, which considered that the requirement of obtaining a "public utility" status introduced just seven months prior to the scheduled parliamentary elections constituted a violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 of Protocol No. 1 (right to free elections) to the Convention. It also notes that the Constitutional Court of Romania held, in a decision of 6 November 2008, that the conditions laid down in the law, in particular the requirement of national minority organisations to have been granted "public utility" status in order to field candidates were constitutional.

138. Furthermore, the Advisory Committee notes that the 2015 Law on local elections introduced restrictive conditions on parties wishing to participate in elections, similar to those applicable to national parliamentary elections. In order to participate at local and county level elections, national minority organisations that do not have parliamentary representation need to present a list of members comprising a total of at least 15% of the total number of citizens who declared themselves as belonging to a minority at the last census. If the number of persons declaring a given ethnic affiliation exceeds 25 000 people, (which is the case of the Hungarian, German, Ukrainian and Turkish minority as well as the Roma) the prospective organisation's membership "must include at least 25 000 people residing in at least 15 counties and in Bucharest, but no less than 300 people for each county and municipality Bucharest" (Article 8 Paragraph 4 of Law No. 115/2015). As in the case of parliamentary elections, national minority organisations represented in parliament are not required to provide such lists. Taken together, these conditions pose serious obstacles to the nomination of alternative candidates, thus favouring the election of deputies and councillors whose candidatures had been put forward by the organisations currently represented at the CNM.

139. The Advisory Committee notes that in the last parliamentary elections, held on 12 December 2016, 21 deputies representing the Democratic Alliance of Hungarians in Romania were elected on the basis of general rules applicable to all political parties participating in elections. In addition, 17 deputies representing national minority organisations

which did not pass the electoral threshold were elected, each representing a national minority organisation⁹⁸ participating in the work of the CNM. The Advisory Committee regrets to note that no organisation representing the Tatar national minority contested the 2016 elections, depriving that minority of a possibility to be represented in the Chamber of Deputies. In consequence, given that the Tatar minority is not represented in parliament, it is thereby denied access to a range of opportunities or benefits, such as participation in the work of the CNM.

140. The local elections of 5 June 2016 were contested by three political parties representing persons belonging to the Hungarian minority (Democratic Union of Hungarians in Romania, Hungarian People's Party of Transylvania and the Hungarian Civic Party) which jointly obtained over 5.5% of the vote in elections for the county councils and 5.2% in elections for the local councils. Consequently, 2 649 representatives of Hungarian national minority parties were elected to local councils (out of the total of 40 067 local councillors countrywide), 107 to county councils (out of the total of 1 434 county councillors) together with 208 mayors. The German minority also fielded its representatives⁹⁹ who having obtained about 0.5% of the vote countrywide, won five mayoral races and had 84 local councillors and ten county councillors elected.

141. There are a number of negative consequences for national minority organisations which vary depending on their size and distribution within Romania. The Hungarian People's Party of Transylvania and the Hungarian Civic Party need to collect the required number of signatures distributed among at least 15 counties in order to present candidates. Non-parliamentary organisations representing other numerous national minorities, such as the Turks and Ukrainians, whose members live compactly in only a small number of counties, find it impossible to collect signatures in 15 counties. Organisations active within less numerous national minorities also need to collect signatures in order to present candidates. In consequence, less numerous national minorities are not in a position to present candidates under a party banner. The Advisory Committee notes that councillors belonging to the Bulgarian, Czech, Croat, Greek, Polish, Roma, Russian-Lipovan, Ruthenian, Serbian, Slovak, Tatar, Turkish and Ukrainian national minorities were elected to municipal councils as independent candidates or as members of mainstream political parties.

Recommendation

142. The Advisory Committee considers that the authorities should review legal and administrative provisions on elections as a matter of urgency with a view to creating conditions for free and fair competition in the electoral process between different organisations representing national minorities.

Consultation mechanisms

143. The Advisory Committee notes that there have been no changes in the institutional arrangements as regards the consultation mechanism since the last monitoring cycle. The Council of National Minorities, established in 1993, composed of representatives of the 20 national minority groups and of government ministries, has become the main forum for

⁹⁸ One deputy represents Czech and Slovak national minorities.

⁹⁹ Local and county elections were contested by the Democratic Forum of Germans in Romania.

developing, implementing and monitoring minority policies and is the principal forum for a regular dialogue on issues affecting minorities.

144. The Advisory Committee further notes that membership in the CNM is conditioned by participation of the prospective organisation of a national minority in parliamentary elections, contesting in particular the preferential national minority seat.¹⁰⁰ As no organisation of persons belonging to the Tatar national minority contested the preferential national minority seat in the 2016 parliamentary elections, in consequence no organisation of that minority is entitled to represent Tatars in the CNM. This creates serious difficulties for persons belonging to the Tatar national minority, as most of the funding is channelled through the representative organisations sitting in the CNM.

145. In this context, the Advisory Committee notes that most of the generous funding disbursed by the Department of Interethnic Relations contributes to financing the running costs and projects of national minority organisations participating in the work of the CNM. In 2017, 105 million RON was earmarked for this purpose, up from 104 million RON in 2016. The substantial funding allocated to the 18 organisations, members of the CNM, allows them, on the one hand to finance a variety of activities benefiting the respective national minorities, but on the other hand, makes them quasi-official representatives of national minorities, in practice monopolising and centralising financial resources, deciding on priorities and controlling both substance and procedure. Heavy dependence on state grants of national minority organisations participating in the work of the CNM makes them docile partners of the authorities, potentially unwilling and incapable of voicing strongly national minority expectations while their almost monopolistic position as regards access to resources available for projects, negatively affect the possibility of developing pluralism and creativity within each national minority community.

146. The Advisory Committee considers that the national minority organisations represented in the CNM enjoy a degree of legitimacy, having participated in parliamentary elections. It notes nonetheless, that the electoral procedure gives them an advantage over other national minority organisations, which in order to stand in elections and contest preferential seats for national minorities must be granted by the authorities a 'public utility' status. Organisations which already participate in the CNM do not need to meet this requirement. This effectively allows the authorities to influence which organisations of national minorities are allowed to participate in parliamentary elections and in consequence to represent national minorities.

147. The Advisory Committee recalls that in its Thematic Commentary No. 2 on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs (2008), it recommended that states parties periodically "review the appointment procedures to make sure that the bodies concerned are as inclusive as possible,

¹⁰⁰ Article 2 of the Government Order referred to above and the Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62nd Plenary Session (Venice, 11-12 March 2005); see also Law No. 208/2015 on "the elections of the Senate and Chamber of Deputies, as well as the organization and functioning of the Permanent Electoral Authority" available at <http://legislatie.just.ro/Public/DetaliiDocument/170037> (in Romanian).

maintain their independence from governments, and genuinely represent a wide range of views amongst persons belonging to national minorities”.

148. The Advisory Committee notes that in a number of county offices, posts of advisers on Roma issues have been created, often occupied by Roma. Such appointments send an important signal about the will of county officials to address serious problems faced by the Roma in many areas. It has to be noted, however, that no consultation mechanisms have been created to involve local representatives of the Roma in discussing the persisting discrimination they face and other issues, as well as responses which need to be given.

Recommendations

149. The authorities should review, in co-operation with representatives of national minorities, the procedure of appointment of national minority members to the Council of National Minorities with a view to making the procedure more inclusive and genuinely representative of a wide range of views amongst persons belonging to national minorities.

150. The authorities should consider setting up at the county level consultative structures in co-operation with representatives of national minorities, especially as regards the Roma.

Participation of national minorities in economic and social life

151. The Roma Strategy, established in 2015, continues to be the main operating tool for the implementation of governmental policies for, and with the active Roma participation in the fields of culture, maintaining ethnic identity, improving living and health conditions, preventing racist offences and reducing unemployment. In addition, projects aimed at improving employment and social cohesion, increasing the education level and reducing social exclusion of the Roma continue to benefit from financing available from the European Social Fund and the Operational Project ‘Human Capital’.

152. As regards access to employment, the strategy aims to improve Roma participation in the labour market by training aimed at skills development, counselling and mediation services to job seekers, fostering job mobility and entrepreneurship among Roma, incentives for employers hiring job seekers from vulnerable social groups accompanied by information campaigns on the labour market. It is noted that additional funding for programmes and projects in the areas of education and employment are secured by the European Social Fund.

153. Recognising current deficiencies resulting in discrimination in access to health services, the strategy seeks to increase access of the Roma to the national social insurance system thus improving their access to basic, preventive and therapeutic medical services with the aim of lowering the morbidity and mortality levels affecting them. Particular attention is paid to vaccination of children and implementation of prevention programmes against infectious diseases. The strategy also aims to improve the local authorities’ capacity to correctly identify and address the needs and to prevent discrimination suffered by the Roma in the health system.

154. In the field of housing, the strategy envisages construction of social housing for low-income Romanians including the Roma, refurbishment of houses in Roma settlements,

development of public utilities' infrastructure in such areas and measures facilitating the issuing of real estate documents.

155. Implementation of projects designed to improve housing and infrastructure depends on co-operation between the Roma, the central authorities, as well as county and local authorities who are responsible for the provision of land, and necessary construction permits. The Advisory Committee welcomes, in particular, the Constanța Social Campus, which it visited and which provides homes to people many of whom were homeless before. It is inhabited by Roma, pensioners, people with disabilities, socially dependent and other vulnerable people. The housing project in Constanța could be considered a commendable pilot project which should be replicated elsewhere. However, many lessons learned during and after construction should be taken into account in future similar projects. These include type of construction materials used, and the cost of utilities such as heating which may prove to be prohibitively expensive for the low income tenants. Furthermore, other projects should be from the outset consulted with potential tenants and principles of a participatory approach should be used in future. In the Constanța Social Campus the top-down approach and the lack of participation of tenants in the project did not create a sense of ownership.

Recommendations

156. The Advisory Committee urges the authorities to use a participatory approach and consultations with the target groups when developing, implementing and evaluating projects and programmes, amongst others, for the Roma.

157. The Advisory Committee strongly recommends that the authorities intensify their efforts to address problems confronting many Roma in fields such as housing, employment and health care, in order to ensure their full and effective participation in the social and economic life of the country.

Article 16 of the Framework Convention

Administrative reform

158. The Advisory Committee recalls concerns it expressed in its third opinion, regarding possible negative effects of the reform of the territorial administration of Romania, in particular as regards the creation of eight larger regional units.¹⁰¹ In this context, the Advisory Committee further notes Recommendation 300(2011) on Local and regional democracy in Romania adopted by the Congress of Local and Regional Authorities on 22 March 2011¹⁰²

¹⁰¹ According to Article 5(1) of Law No. 315/2004 on regional development, the territory of Romania is divided into eight development regions, namely: the North-East Region, which comprises the counties of Botoșani, Vaslui, Iași, Suceava, Neamț and Bacău; the South-East Region, which comprises the counties of Brăila, Galați, Constanța, Tulcea, Vrancea and Buzău; the South Region, which comprises the counties of Argeș, Dâmbovița, Prahova, Teleorman, Giurgiu, Ialomița and Călărași; the South-West Region, which comprises the counties of Dolj, Olt, Mehedinți, Gorj and Vâlcea; the West Region, which comprises the counties of Timiș, Arad, Caraș-Severin and Hunedoara; the North-West Region, which comprises the counties of Cluj, Bihor, Satu-Mare, Maramureș, Bistrița-Năsăud and Sălaj; the Centre Region, which comprises the counties of Brașov, Sibiu, Covasna, Harghita, Mureș and Alba; and the Region of Bucharest. The development regions are not administrative territorial units and do not have legal personality.

¹⁰² Available at

which contained a number of specific recommendations aimed, *inter alia* at continuing the reforms begun on regional development in order to involve the regions in territorial administration, relaxing conditions with which some organisations of national minorities have to comply in order to stand in local elections and continuing “to implement measures aimed at the full integration of national minorities into the local communities, especially by quickly examining new measures that facilitate their access to public services”. In the last decade discussions have been ongoing as regards the creation of a smaller number of larger regional units, replacing the current administrative structure based on 41 counties.

159. The Advisory Committee notes that changes to the territorial structure of the country, while beneficial to some, may affect negatively others. In particular, the reform of the territorial structure of the country may affect the exercise of a number of rights which are conditional on reaching a certain threshold of persons identifying themselves with a national minority and residing within the territorial unit in question. Consequently, the Advisory Committee urges the authorities to proceed with caution and to consult representatives of national minorities on the number of new administrative units, their borders and thresholds (or abolition thereof altogether) which would be required to trigger access to rights.

Recommendation

160. The Advisory Committee urges the authorities to ensure that, when redrawing administrative boundaries, the rights and freedoms which flow from the Framework Convention are not restricted and that effective participation of persons belonging to national minorities in discussions at local and regional levels is guaranteed.

Articles 17 and 18 of the Framework Convention

Bilateral co-operation

161. The Advisory Committee notes that Romania has concluded bilateral agreements containing clauses aimed at protecting national minorities. Protection of national minority rights is addressed in interstate agreements between Romania and the following states: Croatia, the Czech Republic, Germany, Hungary, the Russian Federation, Serbia, the Slovak Republic, Turkey and Ukraine. The Advisory Committee wishes nonetheless to recall in this respect, that the protection of national minority rights in any state is primarily the responsibility of that state and in no case should be dependent on the condition of bilateral relations.

Recommendation

162. The Advisory Committee encourages the authorities to implement existing bilateral agreements in the spirit of good neighbourliness, friendly relations and co-operation between states, whilst respecting the role of multilateral standards and procedures.

III. Conclusions

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

164. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.¹⁰³ In particular, they should take the following measures to improve further the implementation of the Framework Convention:

Recommendations for immediate action¹⁰⁴

➤ **adopt without further delay and in consultation with representatives of national minorities a consolidated and coherent legal framework related to minority rights protection; take due care when examining draft legislation not to restrict the rights and freedoms guaranteed by the Framework Convention and ensure that effective participation of persons belonging to national minorities in discussions at local and regional levels is guaranteed;**

➤ **increase efforts to prevent and to combat inequality and discrimination suffered by the Roma; take further measures to eliminate all forms of segregation of Roma children and other forms of discrimination of Roma children at school with a view to including them fully into mainstream education; ensure that adequate alternative non-segregated accommodation is provided without delay to Roma inhabitants relocated from dwellings unsuitable for habitation;**

➤ **take targeted and effective action without delay to prevent, investigate and prosecute offences committed with racial or xenophobic motive; investigate promptly and in a transparent manner all cases of alleged police abuse and misconduct, so as to ensure that the public, including the Roma, have confidence in the impartiality and effectiveness of the complaints mechanism in such cases; take a robust stance against and condemn racist, xenophobic and anti-Roma language in political discourse and in the media;**

➤ **review as a matter of urgency the legal and administrative provisions on elections with a view to creating conditions for free and fair competition in the electoral process between different organisations representing national minorities; review the procedure of appointment of national minority members to the Council of National Minorities with a view to making it more inclusive and genuinely representative of diversity within national minorities.**

¹⁰³ A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

¹⁰⁴ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

Further recommendations¹⁰⁵

- examine, in consultation with those concerned, the possibility of including persons claiming specific protection as a national minority belonging to groups which currently are not afforded such rights, in the application of the Framework Convention, in particular as regards their linguistic and cultural interests;
- regularly evaluate and review the implementation of the National Roma Inclusion Strategy and accompanying action plans for the inclusion of Roma, in close consultation with representatives of this community, with a view to assessing their impact in promoting the full and effective equality of Roma and strengthening them wherever necessary; make specific budgetary provision for the implementation of the current national, county and municipal action plans for the integration of Roma;
- intensify efforts to promote respect and intercultural understanding among the different groups in society as a whole, including through comprehensive measures that target the majority population; engage actively in a dialogue with local representatives of the Hungarian minority from the Covasna, Harghita and Mureş counties on measures to be taken to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage;
- facilitate the use of minority languages in relations with administrative authorities in those municipalities where persons belonging to national minorities live in substantial numbers, in particular by establishing standardised certified administrative forms and other printed documents in bilingual formats; take more proactive measures to ensure that the provisions of display of topographic indications in national minority languages are effectively implemented; encourage local authorities to take a flexible approach over the introduction of signs displaying street names in languages of national minorities; take the necessary legislative and administrative measures which would guarantee the possibility for local newspapers to be published in languages of national minorities with the support of local authorities;
- assess, in consultation with the representatives of national minorities, whether the existing legal framework for teaching in minority languages, and practical arrangements corresponds to actual needs and, where appropriate, take the necessary steps to address any shortcomings; take specific measures to support educational initiatives of less numerous national minorities;
- consider setting up consultative structures at the county level, especially as regards the Roma.

¹⁰⁵ Ibid.