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

**Third Opinion on Kosovo*
adopted on 6 March 2013**

EXECUTIVE SUMMARY

Progress in implementing the Framework Convention continues to be made. Trust and understanding between communities have been developed in some municipalities where authorities have closely consulted community representatives and made efforts to effectively implement relevant policy and legislative frameworks, such as related to security and the promotion of equal access to education and employment. Progress remains sporadic, though, and is due mainly to the commitment and initiative of individuals or civil society and often supported by the international community. More concerted central coordination, guidance, and support is required to expand and institutionalise the achievements that have been made. Voluntary return has decreased and remains impossible in some areas because of persisting security concerns. There is a negative trend towards nationalism and the creation of a homogeneous society, particularly in the urban centres and among youth, with limited tolerance for minority languages, cultures, traditions and identities. This trend can be observed throughout Kosovo* and is detrimental in particular to the numerically smaller communities who must receive regular support to preserve and develop their distinct cultures. The few existing initiatives to create platforms for interaction and dialogue between communities do not receive consistent support from the authorities. Younger generations do not learn and use both official languages and efforts to develop a common civic identity that is based firmly on the appreciation of diversity in society are insufficient. Participation of minority communities in decision-making processes on all issues that concern them remains ineffective.

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

Issues for immediate action

- **Take effective measures for the promotion of inter-ethnic understanding and respect at all levels, including a transparent cultural policy based on the appreciation of diversity and the establishment of an integrated and multilingual education system. Create adequate platforms where members of different groups, in particular young people, can meet and interact;**
- **Condemn unequivocally, promptly and systematically, at central and municipal level, all acts of inter-ethnic hostility. Ensure that police investigations into security incidents affecting communities are promptly and professionally followed up by prosecutorial and judicial services to reinstall trust in the rule of law; take resolute measures at all levels to reassure displaced persons and returnees that their return is welcome;**
- **Take all necessary measures to enhance the implementation of the language legislation at central and municipal level. Support the Language Commissioner in the exercise of his functions through adequate financial and human resources and prioritise the creation of an overall environment that actively encourages multilingualism in the public sphere;**
- **Improve the quality of education in the languages of numerically smaller communities and identify appropriate solutions to the remaining obstacles to access to education for children belonging to the Gorani, Roma, Ashkali and Egyptian communities; review teaching materials and methodology to render them appropriate for a multi-ethnic society;**
- **Provide effective opportunities for persons belonging to all minority communities, including numerically smaller ones, to participate in relevant decision-making processes at central and local level while ensuring that all efforts enhance integration rather than the development of separate structures.**

TABLE OF CONTENTS

I. MAIN FINDINGS	5
Monitoring process.....	5
General overview of the implementation of the Framework Convention after two monitoring cycles	5
General legislative and institutional framework	6
Population census.....	6
Freedom of movement and return process	6
Access to justice	7
Situation of Roma, Ashkali and Egyptian communities	7
Protection and promotion of minority cultures	7
Tolerance and inter-ethnic dialogue	8
Freedom of association and religious freedom	8
Access of minority communities to the media	8
Use of minority languages.....	9
Education.....	9
Effective participation in elected bodies and administration	10
II. ARTICLE-BY-ARTICLE FINDINGS	11
Article 3 of the Framework Convention	11
Article 4 of the Framework Convention	13
Article 5 of the Framework Convention	22
Article 6 of the Framework Convention	24
Article 7 of the Framework Convention	29
Article 8 of the Framework Convention	30
Article 9 of the Framework Convention	31
Article 10 of the Framework Convention	32
Article 11 of the Framework Convention	35
Article 12 of the Framework Convention	36
Article 14 of the Framework Convention	40
Article 15 of the Framework Convention	42
Article 16 of the Framework Convention	47
Articles 17 and 18	49
III. CONCLUSIONS.....	50
Positive developments following two cycles of monitoring.....	50
Issues of concern following two cycles of monitoring	51
Issues for immediate action.....	53
Further recommendations.....	53

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

THIRD OPINION ON KOSOVO*

1. The Advisory Committee adopted the present Opinion in accordance with the Agreement between the Council of Europe and the United Nations Interim Administration Mission in Kosovo (UNMIK) on the Technical Arrangements Related to the Framework Convention for the Protection of National Minorities, signed on 23 August 2004 (hereinafter the Agreement). The findings are based on information contained in the progress report prepared by the OSCE and submitted by UNMIK in accordance with the Agreement on 13 September 2012 and other written sources, and on information obtained by the Advisory Committee from official and non-governmental contacts during its visit to Prishtinë/Priština as well as the municipalities of Ferizaj/Uroševac, Fushë Kosovë/Kosovo Polje, Gračanica/Gračanicë, north and south Mitrovicë/Mitrovica, Prizren, Suharekë/Suva Reka, Vushtrri/Vučitrn and Zvečan/Zveçan from 2 to 7 December 2012.

2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Kosovo*. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.

3. Both sections make extensive reference to the follow-up given to the findings of the monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on Kosovo*, adopted on 25 November 2005 and 5 November 2009 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 21 June 2006 and 6 July 2011.

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

5. The Advisory Committee looks forward to continuing its dialogue with the authorities in Kosovo* 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 encourages UNMIK to make the present Opinion public upon its receipt.

I. MAIN FINDINGS

Monitoring process

6. The Advisory Committee welcomes the close co-operation with UNMIK and the Organisation for Security and Co-operation in Europe Mission in Kosovo (OSCE Mission) in the preparation, organisation and follow-up of the visit, and expresses its profound gratitude for the invaluable support and assistance received during the visit. It further is pleased to note the constructive approach taken by the authorities who made themselves available for a multitude of high-level meetings at central and local level, providing ample opportunity for frank discussions. The Advisory Committee notes that the progress report was prepared by the OSCE Mission based on close consultations with representatives of all communities as well as relevant governmental and non-governmental entities throughout Kosovo*, constituting a comprehensive source of detailed information and analysis. It further acknowledges the substantial number of reports and assessments prepared by other international and national organisations in Kosovo*.

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

7. The Advisory Committee notes that meaningful progress has been made in important areas related to the promotion and protection of minority communities. Some municipalities have successfully developed trust among minority communities through close consultations and the effective implementation of relevant policy and legislative frameworks such as related to security, equal access to education, and the particular needs of the Roma, Ashkali and Egyptian communities. While this progress is commendable, it remains sporadic and based on the commitment and initiative of some municipal authorities, individuals or civil society. Moreover, initiatives are often reliant on the international community, as concerted central coordination, guidance, and support from the authorities to expand and institutionalise accomplishments are still lacking. The Advisory Committee acknowledges that the development of viable structures and a professional judiciary requires years. At the same time, it notes worrying trends towards nationalism and the creation of a homogeneous society with little space and tolerance for other minority languages, cultures, traditions and identities, which is particularly detrimental to the numerically smaller communities. It considers that urgent and concerted action is required to ensure that this trend does not become irreversible, as younger generations have already lost their bilingualism and nationalist views are particularly common among youth.

8. The Advisory Committee further notes that substantial parts of the population place high expectations on the European Union-facilitated dialogue between Pristina and Belgrade as necessary stepping stone towards visa liberalisation, and that developments in this sphere have an immediate impact on inter-ethnic understanding or lack thereof in Kosovo*. The recent rise in security incidents affecting minority communities and their religious sites is widely interpreted as linked to parallel events in southern Serbia. The Advisory Committee is deeply concerned by the apparent politicisation of minority rights protection in this context and observes that the unpredictability of developments regarding the status of Kosovo* constitutes a great source of uncertainty and confusion among parts of the population, particularly in the north. While acknowledging the regional perspective and the importance of political discussions in the current context, it reminds the authorities that their obligations to protect and promote the rights of all persons belonging to minority communities stem directly from the Constitution and relevant international standards, such as the Framework Convention, and require an earnest

commitment at central and local level to implement applicable legislation in good faith, whatever the outcome or length of on-going negotiations.

General legislative and institutional framework

9. The legislative framework related to the protection and promotion of minority rights is generally in line with the Framework Convention and in some aspects one of the most advanced in Europe. The Advisory Committee welcomes the inclusion in December 2011 of the Croat and Montenegrin communities into the scope of application of the Law on the Protection and Promotion of the Rights of Communities. Serious gaps continue to exist, however, when it comes to the implementation of legislation due to a lack of resources, both financial and human, as well as lack of know-how, effective coordination between central and local entities, and, sometimes, good will by municipal authorities. The institutional set-up remains fragmented and characterised by multiple layers of administrative structures with overlapping mandates, hampering overall the effectiveness of implementation. The Ombudsperson Institution enjoys trust in its independence and professionalism among all communities. It requires a substantial increase in financial as well as political support, however, in order to be able to more effectively exercise its key functions. Awareness must be raised among the population at large about the mandate of the Ombudsperson as well as his findings and recommendations, which must be duly implemented by central and local authorities.

Population census

10. The population and housing census was conducted in April 2011, covering 34 of 38 municipalities, providing a range of valuable and detailed information on the population which is crucial for targeted policy planning. The census is generally considered to have been conducted in a satisfactory manner and in line with relevant standards. Given the boycott in the three northern municipalities and north Mitrovica/Mitrovicë, however, and some resistance in other parts as well, the results differ quite substantially from previous estimates. In addition, minority community representatives report that they were not sufficiently involved in the planning and organisation of the exercise and that the right to free self-identification was not always respected by enumerators.

Freedom of movement and return process

11. Substantial efforts have been made to promote the sustainable return of displaced persons from the region and within Kosovo*. Newly established Municipal Offices for Communities and Return are mandated to promote equal access to rights for all communities and have made successful efforts in some municipalities to effectively coordinate assistance measures in consultation with community representatives. More central-level supervision and direction is needed, however, to promote awareness and know-how among relevant municipal officials. Persistent security concerns in some areas, as well as overall still limited access to core services and employment continue to impede the sustainable return of some displaced persons, mainly belonging to the Serb and Roma communities. Efforts have been made by relevant authorities, including notably the police, to reinstall a sense of security among returnee communities and to support the economic development in return areas, which should be pursued and expanded. In addition, efforts must be increased to ensure that all returnees, from the region as well as from Western Europe, are equally attended to in accordance with their specific and individual needs.

Access to justice

12. The Advisory Committee notes that concerted efforts have been made towards judicial reform and the development of a professional, independent and impartial judiciary service. Nonetheless, the backlog of cases is still enormous and trust in the justice sector remains very limited, particularly among minority communities. More substantial training of judges and prosecutorial staff is required and efforts must be increased to ensure that minority communities are adequately represented among the judiciary, also in order to ensure that their language needs can be accommodated. A high number of pending court cases continue to relate to property issues. Some of the cases are highly complicated and require a comprehensive policy and legislative response related to areas such as compensation and the privatisation of formerly socially-owned property before being processed in court. A national property rights coordinator was appointed in 2011 to provide proposals for appropriate measures to be taken. The particular obstacles faced by internally displaced persons (IDPs) in their access to rights throughout all stages of displacement, thus beyond the facilitation of return, remain inadequately addressed. An inter-ministerial working group on dealing with the past and reconciliation has been established with the aim to promote inter-ethnic understanding and restore trust in the justice system. It should be appropriately supported by all relevant national and international actors.

Situation of Roma, Ashkali and Egyptian communities

13. Comprehensive policy documents aimed at the full integration and effective equality of the Roma, Ashkali and Egyptian communities have been adopted and substantial efforts made to address their continued social exclusion, mainly by non-governmental actors. Despite successful initiatives at municipal level, implementation has thus far been sporadic. Central coordination and direction must be intensified to ensure that the municipal level is duly informed and instructed with regard to its responsibilities and more efforts made to effectively involve community representatives at all levels of decision-making. Despite explicit targets of increasing the representation of the three communities within the administration, the number of civil servants of Roma, Ashkali or Egyptian origin is still low and representatives report that they are often not considered for available positions, despite being adequately qualified. The perseverance of discriminatory attitudes among officials and society at large still hamper the access to rights in a number of important areas, such as acquisition of documents and property titles, health and education for members of the three communities. Following the closure of Česmin Lug in October 2010, the lead-contaminated camp of Osterode was finally closed at the end of 2012.

Protection and promotion of minority cultures

14. Substantial progress has been made by the Reconstruction Implementation Commission, mandated to reconstruct Serbian Orthodox cultural and religious sites damaged in March 2004, with reconstruction of over half of the 34 identified sites completed and major works outstanding at only four sites. With the closure of the International Civilian Office, the Kosovo* Assembly (Assembly) adopted the creation of an Implementation and Monitoring Council (IMC). The IMC has been established and mandated to monitor the implementation of 45 special protected zones surrounding religious and cultural heritage of the Serbian Orthodox Church. The IMC will work with an EU facilitator under the authority of the EU Special Representative. More efforts must be made, however, towards the effective preservation and development of the cultures and traditions of the numerically smaller communities. A transparent mechanism for the allocation of support for cultural activities based on objective

criteria should be created to ensure that all communities have equal access to financial and other assistance and are involved in relevant decision-making. In addition, it is of concern to the Advisory Committee that no comprehensive cultural policy aimed at multiculturalism and the promotion of diversity has been developed. Concerted and urgent efforts must be made in this regard, targeting in particular urban centres where evidence of minority cultures is steadily being removed from public spaces and replaced by symbols and images that appear to endorse only one cultural identity.

Tolerance and inter-ethnic dialogue

15. The Advisory Committee is deeply concerned about the lack of sustainable progress in relations between ethnic groups. There is a sense of deterioration in particular linked to urban centres and young people. Urgent action must be taken to reverse this trend and promote appreciation for diversity and different cultures, languages and identities. Years of separation in two parallel education systems have resulted in a new generation that no longer speaks the other official language and the few initiatives that have been made to bring young representatives of both groups together, mainly arranged by civil society and supported by the international community, often resort to the English language as medium of communication. In addition, media has sometimes further instigated inter-ethnic hostility through non-objective and unprofessional reporting and intolerance towards minority rights is exhibited by some high-ranking politicians, including via live TV broadcasts. While partially successful efforts are made by some authorities at central and municipal levels to promote the trust of minority communities and create a tolerant environment based on mutual understanding and respect, an overall institutional appreciation for the key significance of inter-ethnic trust for a stable and safe future in Kosovo* is still absent. Security incidents, including violence, continue to affect minority communities and have increased in some areas, despite encouraging progress made by the police in effectively addressing the safety of communities.

Freedom of association and religious freedom

16. The enjoyment of rights by members of minority communities continues to be hampered by a persistent atmosphere of intimidation and fear. While important progress has been made in some areas, including the reopening of the Orthodox seminary of Bogoslovija in Prizren, persons belonging to minority communities report that their rights to manifest their religious beliefs remain insufficiently protected and that harassment and intimidation of worshippers are common, particularly in urban centres. The rise in incidents of vandalism and violent destruction of Orthodox graveyards and other religious sites in December 2012 and early 2013 further exacerbate the fear experienced by minority communities in relation to their religious freedom.

Access of minority communities to the media

17. The legislative framework concerning media in minority languages remains favourable and a broad array of minority language TV and radio broadcasts exist. Implementation is still incomplete, however, among others due to technical obstacles to coverage in remote areas that are inhabited in significant number by minority communities. There are plans for the establishment of a second public TV channel devoted entirely to the languages and concerns of minority communities, which is welcome by most representatives. Overall, however, the numerically smaller communities report that access to print and broadcast media in their languages remains very difficult, particularly as regards the Turkish and Gorani languages, and Romani. In addition, there are reports that the quality of the reporting and programming in

minority languages is often low and that insufficient attention is paid to the training and recruitment of qualified media professionals. In addition, members of minority communities still feel that they are not adequately reflected in mainstream media and that their concerns are insufficiently covered. More attention must be paid to ensure that representatives are appropriately involved in the management of programming and of available funds.

Use of minority languages

18. Implementation of the language legislation, which remains one of the most ambitious in Europe in terms of its low thresholds, appears to have further deteriorated. Monolingualism is gradually being established in many municipalities with only few exceptions of public offices attempting to use both official languages and relevant minority languages in line with the legislation. While acknowledging the scope of the challenge, from a human and financial resources point of view, to accommodate the official use of a language that is spoken by 3% of the population in a given municipality, the Advisory Committee is concerned about the lack of will in many municipalities to provide even basic services in the respective languages. The situation is exacerbated by the fact that it is increasingly difficult to recruit public servants that are proficient in both official languages, let alone relevant minority languages. Urgent efforts must be made to create an environment that is generally conducive to the use of other languages in public, including on topographical signs, and priority should be given to promote direct communication in minority languages in official settings. Efforts to train civil servants in both official languages are welcome in this regard and should be strengthened. The Language Commission underwent reform and has been replaced by the Office of the Language Commissioner to oversee and provide incentives to implement the language legislation and provide for an effective complaints mechanism. Concerted efforts must be made and appropriate resources provided to raise awareness among the civil service and the public at large about language rights and the available remedies in case of violation.

Education

19. In the absence of Serbian-language instruction within the Kosovo* curriculum, most children belonging to the Serb community and the majority of Roma children continue to attend Serbian-administered schools, using a separate curriculum. There is almost no interaction among children attending the different school systems, even in municipalities where they use the same school premises. While efforts are being made to introduce modern teaching methodology including with regard to language learning through a comprehensive education reform process, there are no concerted efforts to overcome the language divide experienced by younger generations and to institutionalise quality instruction in both official languages in all schools, including through the use of bilingual and multilingual teaching. Some minority language schools continue to teach in Turkish and Bosnian languages, and three schools in Prizren have piloted optional Romani classes. However, community representatives are concerned about the continued inadequacies in the quality of education in minority language schools, including insufficient instruction in the official languages, inadequate quality and quantity of teaching materials, and the fact that textbooks in use in both education systems still contain elements of nationalism and prejudice that are harmful towards other communities. Initiatives to review history teaching in schools and to train teachers to promote intercultural respect and tolerance must be intensified as a matter of absolute priority.

Effective participation in elected bodies and administration

20. A number of mechanisms exist to promote the representation and participation of minority communities in public life. Twenty seats in the Assembly and a number of positions are reserved for minority communities. However, representatives of numerically smaller communities are rarely appointed to higher positions at central and local level and there is a general perception that appointments are made based on political considerations. The Committee on Rights and Interest of Communities in the Assembly has only limited input on legislative drafts of concern to communities as its recommendations and suggestions are reportedly not effectively considered. The on-going decentralisation process has led to the creation of five new municipalities with a majority Serb population. While this development has overall contributed to the effective participation of communities in public life and brought services closer to residents, attention must be paid to ensure that it does not lead to further separation but rather integration and co-operation among communities. In addition, comprehensive training is necessary to build relevant capacities of officials in the new municipalities.

21. The Advisory Committee further considers that regular and effective consultation with minority communities must be institutionalised at municipal and central level to ensure that their views and concerns are duly taken into account on all issues affecting them and they are actively involved in relevant decision-making processes. Despite some strengthening of the role and efficacy of the Consultative Council for Communities under the President, its members still contend that they are not given effective opportunities to provide input on important issues of immediate concern to them, such as decentralisation or privatisation processes, and that their views are not taken sufficiently seriously. In addition, the lack of central coordination and guidance impedes the effective sharing of information and thereby thwarts efforts to comprehensively address identified challenges. Amid an overall delicate socio-economic situation and alarming poverty levels, persons belonging to minority communities remain disproportionately affected. The private sector economy is generally developing at a slower pace in areas inhabited by minority communities and residents appear often not suitably informed about employment or business opportunities, including in relation to the on-going privatisation process. Particular obstacles further continue to exist with regard to their access to health and other core services and must be duly addressed.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

22. In the previous monitoring cycles, the Advisory Committee encouraged the authorities to maintain their flexible approach towards the scope of application of the Framework Convention and to continue their dialogue with persons belonging to the Montenegrin community concerning their possible inclusion.

Present situation

23. The Advisory Committee is pleased to note that the Law on the Protection and Promotion of the Rights of Communities was amended in December 2011 and now explicitly includes the Croat and Montenegrin communities in its scope of application.¹ This development follows continued efforts by representatives of the two communities. They contend, however, that corresponding amendments to the 2008 Constitution are still outstanding, which would provide them with reserved seats in the Assembly, as also available to other recognised communities. The Advisory Committee expects that this demand will be carefully considered and consulted upon with representatives of all minority communities (see below comments under Article 15).

Recommendation

24. The Advisory Committee encourages the authorities to pursue their inclusive approach to the personal scope of application of the Framework Convention and to maintain a constructive dialogue with representatives of all communities on issues that affect the protection of their rights as members of minority communities.

Population and housing census

Recommendations from the two previous cycles of monitoring

25. In the previous monitoring cycles, the Advisory Committee urged the authorities to take all necessary efforts to ensure maximum participation in the census that was being planned and to take all necessary measures to ensure that existing international data protection standards were fully respected. It also reminded the authorities that the right to free self-identification of persons belonging to minority communities had to be strictly respected, including as regards the possibility of expressing multiple identities.

Present situation

26. The Advisory Committee notes that a population and housing census was conducted in April 2011, following three pilot exercises in 2005, 2006 and 2008. It acknowledges the

¹ See Law No. 04/L-020 on amending and supplementing Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 21 December 2011. Article 1.4 of this law explicitly recognises “Kosovo Serbs, Kosovo Turks, Kosovo Bosniaks, Roma, Ashkali, Egyptians, Gorani, Kosovo Montenegrins and Kosovo Croats as communities that are to be afforded the protection of this law. Communities who are in a majority in Kosovo as a whole are also to be afforded the protection of this law where they are in a numerical minority in a particular municipality”. See Article 1.4 of the law at <http://www.assembly-kosova.org/?cid=2,191,798>.

substantial efforts invested by the Agency of Statistics and the international organisations involved to overcome the specific challenges that had been identified, from both a technical and methodological point of view. The official results of the census were published in September 2012. The International Monitoring Operation,² established to monitor the preparations, enumeration, and census result analysis, concluded that the census "could be considered as having been conducted in a reasonably satisfactory manner."³ Due to a boycott by residents, however, the census did not take place in the predominantly Serb-inhabited municipalities of Zvečan/Zveçan, Leposavić/Leposaviq and Zubin Potok, and in north Mitrovica/Mitrovicë.

27. The census provides institutions with a range of detailed and valuable information, related, for instance, to household income, employment situation and educational attainment, which is crucial for the targeted development of public policies. However, due notably to the fact that it took place only in 34 out of 38 municipalities, and to resistance to participate also among some Serb and Roma residents in other areas, the census results for these two communities, as well as other minority communities, differ quite substantially from previous estimates and available data.⁴ This is of particular concern in Kosovo* as a number of specific rights of persons belonging to minority communities are conditioned on the percentage of the community in the overall population (see below comments on Article 10 and 15). The Advisory Committee considers it regrettable that the exercise appears overall to have played a divisive role in society despite concerted efforts by authorities to raise awareness of its necessity and significance, and that the results are not considered reliable by substantial parts of the population.⁵

28. As regards the actual conduct of the census, the Advisory Committee welcomes the fact that questions on ethnic background and religion were not compulsory and provided opportunity for open-ended responses, including thereby the possibility to express multiple identities. It gained the impression from discussions with national and international interlocutors, however, that insufficient efforts were made to include or at least consult representatives of minority communities regarding the organisation and preparation of the census. Representatives of smaller communities in particular indicated that few enumerators with minority background were employed and even fewer nominated as members of the municipal census commissions, which added to the impression that data concerning these communities was not accurately reflected.⁶ During its visit, the Advisory Committee received numerous reports about enumerators who manifested insufficient awareness or training by filling out questionnaires for members of minority communities without asking questions and without respecting the respondents' right to free self-identification, as contained in Article 3.1 of the Framework Convention. While questionnaires were available in the two official languages, as well as Turkish and English, enumerators reportedly did not always come equipped with the appropriate language version, nor were they always able to speak official languages.

² Representatives of the European Commission, Council of Europe, United Nations Economic Commission for Europe and United Nations Statistical Division took part in the IMO project, chaired by the Eurostat.

³ See http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2012/21092012_02_en.htm.

⁴ See, among others, European Centre for Minority Issues Kosovo* (ECMI), Policy Brief of 18 December 2012.

⁵ During the monitoring visit, doubts were expressed among others by some officials who argued that the diaspora should also have been included in the census.

⁶ Persons belonging to the Gorani community, for instance, reported that no person of Gorani origin was nominated as member of the municipal census commission in Dragash/Dragaš and that only 10% of the enumerators employed were of Gorani background, even though the percentage of the Gorani population in the municipality is close to 30%.

29. The Advisory Committee therefore considers that some flexibility should be applied in the analysis and processing of the census results, particularly as regards the rights of minority communities that are based on their numbers in a given municipality, and refers to data collected through alternative means such as independent surveys and research that provides useful and complementary information. In addition, it is of utmost importance that all collected data is processed and stored in strict conformity with international and regional personal data protection standards.⁷

Recommendation

30. The Advisory Committee calls on the authorities to ensure that the right to free self-identification is unconditionally respected in all future efforts related to data collection and processing. It further invites the authorities to pursue a flexible approach in the use of data gathered through the census for policy development affecting the rights of persons belonging to minority communities, and to maintain close dialogue with all community representatives to ensure that all sources of data collection, including independent ones, are appropriately consulted.

Article 4 of the Framework Convention

Legislative and institutional framework to combat discrimination and promote full and effective equality

Recommendations from the two previous cycles of monitoring

31. In the previous monitoring cycles, the Advisory Committee noted *de facto* discrimination against persons belonging to national minorities, in particular Roma and Serbs, and strongly encouraged the authorities to ensure the effective and independent functioning of the Ombudsman's Office by respecting its independence, by allocating adequate human and financial resources, and by effectively implementing its recommendations. The Advisory Committee further urged the authorities to conduct awareness-raising activities on the guarantees and related remedies provided for in the 2004 Anti-Discrimination Law amongst the population at large, and ensure that legal professionals, including judges and prosecutors, were provided with targeted training in this respect.

Present situation

32. The Ombudsperson Institution remains engaged in its mandate to investigate complaints concerning human rights violations, including those based on discrimination. Competencies also extend to *ex officio* investigations and the issuance of general recommendations to other institutions in terms of their compliance with national and international human rights standards.⁸ The Advisory Committee welcomes the commitment and engagement of the Ombudsperson who is trusted by all communities as an independent voice. At the same time, it regrets the lack of respect paid to the Ombudsperson in presenting his annual reports to the Assembly and the fact that his recommendations are reportedly only rarely implemented. In addition, the Ombudsperson Institution continues to have only a limited number of staff with only 48

⁷ See, for example, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Committee of Ministers' Recommendation No. R (97)18 concerning the protection of personal data collected and processed for statistical purposes.

⁸ See Law on Ombudsperson No.03/L-195 at <http://www.kuvendikosoves.org/common/docs/ligjet/2010-195-eng.pdf>.

positions filled out of the requested 64.⁹ General administrative support, such as with regard to suitable premises both at central and regional level, and the provision of an adequate and duly independent budget in line with the Constitution, is also missing.¹⁰

33. Most observers consider the volume of complaints to the Ombudsperson as moderate, given the limited trust in the judiciary and the range of human rights problems experienced by the population. According to the 2011 Annual Report, 1 453 complaints were received by the Institution, directed mainly against municipalities, courts and ministries. While this constitutes an increase in comparison with the 1 233 cases received in 2010, only 546 cases were considered further and investigations opened. This implies that a large number of persons still appeal to the Ombudsperson without being clear on his specific mandate and functions, despite efforts to increase awareness and outreach. In addition, it appears that the lack of attention paid by central and local institutions to the demands of the Ombudsperson, as well as to his recommendations and criticism, dissuades possible plaintiffs from approaching the Institution as informal means of seeking redress are considered more likely to be successful. The Advisory Committee expects that the Ombudsperson Institution will be paid adequate attention and respect and provided with the appropriate means to be able to effectively realise its important functions.

34. The Advisory Committee further observes that the 2004 Anti-Discrimination Law remains practically unknown among substantial parts of the population, despite some efforts, including by civil society, to raise awareness of the Law and train involved officials. While there is general agreement that the Law is comprehensive in defining the forms of discrimination as well as the protected grounds, its applicability in daily life is hampered by a lack of precision with regard to procedures and sanctions. As a result, overall very few cases or complaints are lodged and processed in courts.¹¹ The Advisory Committee further regrets that no central system for the gathering of data and statistics on discrimination-related complaints or the access to rights of persons belonging to minority communities exist, which is indispensable to effectively respond to the persistent reports of continued direct and indirect, including multiple, discrimination experienced by disadvantaged groups (see comments below and on Article 15). No specific by-laws or mechanisms for its implementation have been adopted.¹² While other bodies have been created through separate instructions, such as the Human Rights Units at ministerial and municipal level, these units fall under the overall coordination of the Office of Good Governance under the Prime Minister and do not have clear instructions or a clear legislative basis concerning the protection from discrimination.¹³

35. While welcoming that the Anti-Discrimination Law and the Law on Communities expressly provide for the possibility of special measures to be developed in order to promote the effective equality of disadvantaged groups, the Advisory Committee regrets that there appears to

⁹ See Annual Report 2011, at <http://www.ombudspersonkosovo.org>. The Advisory Committee regrets in this context that it took until 7 October 2011 to appoint all Deputy Ombudspersons in line with Section 5 of the UNMIK Regulation 2006/6 on the Ombudsperson Institution.

¹⁰ The Ombudsperson was not provided with an opportunity to participate in the discussions in the Assembly following the presentation of his Annual Report in July 2012, in which he voices strong criticism of the failure of institutions to guarantee constitutional rights.

¹¹ See, among others, *Anti-Discrimination Law in Kosovo: seven years on*, Youth Initiative for Human Rights, December 2011.

¹² According to Article 12.3 of the Law, “by-laws can be issued... for the implementation of this Law.”

¹³ See also *Opinion on the Kosovo* Draft Regulation on Mechanisms for Co-operation, Coordination, Monitoring, Reporting, Protection and Promotion of Human Rights*, prepared by the Council of Europe DG I Human Rights Policy and Development Department, March 2013, on the effects of multiplication of mechanisms on the overall effectiveness of arrangements for the promotion and protection of human rights in Kosovo*.

be no coherent strategy as regards the adoption and implementation of such measures and that the Centre for Equal Treatment, foreseen in Article 9.5 of the Anti-Discrimination Law has not been established. While quotas for persons belonging to minority communities exist in a number of spheres to promote their participation in public life, these are widely considered ineffective as well as subject to abuse (see comments below). The Advisory Committee notes that an assessment of the Anti-Discrimination Law has been prepared by the Commission on Human Rights, Gender Equality, Missing Persons and Petitions Committee of the Assembly, recommending that the Law be reviewed as part of the legislative strategy for 2013. It expects that due steps will be taken through this legislative review to provide more clarity and coherence with respect to the implementation of the Law, including as regards the promotion of effective equality through special measures, as also contained in Article 4.2 of the Framework Convention.

Recommendations

36. The Advisory Committee urges the authorities to provide adequate political support and resources to the Ombudsperson Institution to ensure that its mandate can be effectively and independently exercised as provided for by law.

37. The Advisory Committee calls on the authorities to take swift measures to ensure that the Anti-Discrimination Law is effectively implemented and applied by responsible institutions. This should include legislative measures to add clarity to its provisions, as well as increased awareness-raising and training activities among municipal officials and the public at large.

Freedom of movement and return process

Recommendations from the two previous cycles of monitoring

38. In the previous monitoring cycles, the Advisory Committee called on the authorities to make more efforts towards providing conditions for the freedom of movement of persons belonging to minority communities, by effectively ensuring their safety and by addressing their perceptions and fears through dialogue and inter-community trust-building measures. It further urged the authorities to demonstrate a stronger commitment to safe and sustainable return processes, in particular by promoting effective access to socio-economic and educational rights for returnees, including those who had been forcibly returned, and by allocating adequate financial and human resources to implement existing integration strategies.

Present situation

39. The Advisory Committee notes that the number of voluntary returns from within and outside the region have continued to decline since 2010. Only 970 voluntary minority returnees were registered in 2012 after 1 182 returned in 2011 and 2 318 in 2010.¹⁴ According to most interlocutors, the voluntary return process is generally considered complete with relatively few persons remaining registered as having indicated their intent to return. In its recent and comprehensive assessment of the voluntary return process, the OSCE Mission notes some positive developments related to the returns policy since 2010 but refers to inefficient and inconsistent implementation of the policy and legislative framework by municipalities which has a negative effect on the ability of returnees to effectively reintegrate in their place of origin. The Advisory Committee regrets that there is no comprehensive data collection on the number of

¹⁴ All figures taken from UNHCR Statistical Overview Update at end December 2012. Since 2000, a total of 24 297 persons have returned and approximately 235 000 persons remain in displacement (see UNHCR Estimate of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe, as of 30 June 2012).

returnees and analysis of their access to rights apart from the information collected by the UNHCR and OSCE Mission.

40. The establishment of the Municipal Offices for Communities and Return (MOCR) through Prime Minister Regulation in August 2010 is considered the most notable policy development affecting returns at municipal level.¹⁵ Equipped with some basic staffing and operational resources, these local coordination mechanisms are mandated to “protect and promote the rights of communities, the equal access of all communities to public services and the creation of conditions for sustainable return of refugees, displaced persons and repatriated persons,”¹⁶ by assessing the needs of returnees, providing information on their rights, and developing municipal returns strategies in order to provide municipal institutions with a framework to guide their activities in this area. The Advisory Committee welcomes this important step taken by the authorities to better coordinate and institutionalise return efforts at municipal level and expects that MOCRs will be provided with all necessary resources and support to fulfil their comprehensive mandate. In addition, attention must be paid at central level to ensure the regular coordination, monitoring and evaluation of the activities of the MOCRs, in consultation with representatives of minority communities (see below comments on Article 15). Finally, given the central role played by the MOCRs, it is imperative that they are suitably trained to perform their tasks, such as related to careful individual needs assessments of returnees which are crucial to successful integration.

41. The Advisory Committee welcomes the focus placed on reintegration and sustainability of return in the Strategy adopted in February 2010 by the Ministry of Communities and Returns, which maintains the institutional responsibility for the oversight of the return process. Efforts have been made, for instance, to support the development of small businesses and enterprises through the provision of grants and some vocational training to returnees, organised at municipal level through the MOCRs. There are reports, however, of continued obstacles faced by returnees as regards access to education and health, as well as other social services. Community representatives contend that MOCRs often pay insufficient attention to the specific needs of returnee children or the elderly and there are perceptions by returnees belonging to numerically smaller minority communities that the MOCRs are prioritising the needs of Serb returnees.¹⁷ The particular needs of returnees without property have been acknowledged through the adoption of relevant legislation in 2010.¹⁸ However, more concrete action is required to sustainably ensure adequate housing for returnees without property and resolve the situation of informal settlements, which continues to affect mainly persons belonging to the Roma community. The Advisory Committee is concerned by the refusal of some municipalities to allocate land to displaced families, as there is a general shortage of suitable municipal land after the privatisation of the most desirable plots.

42. According to interlocutors of the Advisory Committee, almost 95% of returnee families depend on the provision of social assistance, and unemployment, particularly in rural areas, is considered one of the main obstacles to sustainable return. While returnees of Serb or Roma origin who possess Serbian documents receive assistance from the Serbian Government and have access to health services and education in their language, others are relying on the social assistance provided by Kosovo* authorities which only becomes effective once they have

¹⁵ See OSCE Mission, *An Assessment of the Voluntary Returns process in Kosovo*, October 2012.

¹⁶ See Article 1 of Regulation No. 02/2010 of the Office of the Prime Minister, adopted 12 August 2010 http://www.kryeministri-ks.net/repository/docs/Rregullore_per_Zyrat_komunale_per_Komunitete_dhe_Kthim.pdf.

¹⁷ The Advisory Committee refers in this regard to a call for applications for housing assistance issued by Gračanica/Graçanicë municipality that reportedly indicated “only for members of the Serb community”.

¹⁸ See Law No.03/L-164 on Housing Financing Specific Programs of 25 February 2010.

obtained valid identity documents. The Advisory Committee refers to legislation that requires authorities to pay particular attention to the specific needs of persons belonging to minority communities, in particular the Roma, Ashkali and Egyptians.¹⁹ Targeted schemes should be developed to promote the access to rights of members of minority communities, including through positive measures, as explicitly foreseen in Article 4.2 of the Framework Convention. In addition, efforts should be made to discourage returnees from selling their property immediately after repossessing and providing incentives for them to remain in their places of origin.

43. The Advisory Committee further notes that the numbers of forced returns and assisted repatriations from Western Europe are consistently higher than those of voluntary returns, with the percentage of minority forced returns steadily increasing, particularly those belonging to the Roma, Ashkali and Egyptian communities.²⁰ There are disquieting reports that the authorities are paying more attention to the reintegration process of persons returning from Western Europe as successful readmission is perceived as a tool for advancing visa liberalisation and EU accession. While welcoming efforts to improve the readmission process through a clearer assumption of responsibilities at municipal level, the Advisory Committee is concerned by the apparent establishment of two parallel reintegration systems that may create inequalities among returnees from Western Europe and those coming from within Kosovo* or the region. It reminds the authorities of the overriding obligation to promote full and effective equality among all persons belonging to minority communities, in line with Article 4 of the Framework Convention.

44. In addition, security is still an issue of deep concern to many returnees and has a strong impact on their freedom of movement. The responsiveness of municipal authorities differs greatly from concerted and genuine engagement such as reported in Ferizaj/Uroševac and Gjiilan/Gnjilane municipality to more dismissive attitudes in other areas, such as in Pejë/Peć municipality.²¹ Overall, there appears to be still too little interaction between returning and receiving communities, with locations where such communication was initialised even prior to return reporting better overall security conditions. Limitations to the freedom of movement are particularly persistent for Albanian communities in mixed settlements in north Mitrovica/Mitrovicë and the three northern effectively Serbian-administered municipalities, who face security concerns in their access to most services as well as to employment opportunities, and who depend mainly on south Mitrovicë/Mitrovica for hospitals and secondary education.

Recommendations

45. The Advisory Committee calls on the authorities to improve their coordination and supervision of MOCRs and ensure that their responsibilities are fully and effectively implemented. Efforts must be made to increase the awareness and know-how of MOCRs to respond adequately to the specific needs of returnees, and make appropriate financial and human resources available.

46. The Advisory Committee further calls on the authorities to increase their efforts to promote the sustainable integration of returnees through renewed attention to the provision of

¹⁹ Article 9.2 of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (No.3/L-047) reads: “The Republic of Kosovo shall develop public employment programs and other initiatives, in addition to specially targeted measures, aimed at overcoming direct and indirect discrimination against persons belonging to communities. Special consideration shall be given to improving the situation of Roma, Ashkali and Egyptian communities.”

²⁰ See UNHCR Statistics December 2012

²¹ See for more detail OSCE Mission, *An Assessment of the Voluntary Returns Process in Kosovo*, October 2012.

access to social services and employment opportunities, and by ensuring that all returnees are equally attended to in accordance with their specific and individual needs. More efforts must be made to prepare receiving communities and to promote communication and interaction between members of different communities throughout Kosovo*.

Access to justice and property restitution

Recommendations from the two previous cycles of monitoring

47. In the previous monitoring cycles, the Advisory Committee urged the authorities to take vigorous measures to reduce the backlog of cases in the justice system, in particular those relating to property issues, and to guarantee prompt and effective access to justice and respect for the right to a fair trial, with particular attention paid to the situation of persons belonging to minority communities.

Present situation

48. While considerable progress has been made overall in terms of judicial reform and the development of an independent, professional judiciary service, the Advisory Committee regrets that the backlog of court cases is still enormous with 221 528 pending cases at end September 2012, the majority in municipal courts,²² while the number of judges appointed continues to be insufficient.²³ Low qualifications and lack of motivation are cited by a number of interlocutors as additional reasons behind the apparent inability of the justice system to make progress with regards to the permanent backlog of cases.²⁴ The Judicial Institute continues to train new and serving judges, including with support of international and national non-governmental organisations. However, much more substantial training, including for prosecutorial staff and legal professionals more broadly, is still required. The Advisory Committee remains, in addition, concerned by reports that the lack of implementation of the language legislation within the judiciary puts persons belonging to minority communities at an additional disadvantage, as the choice of language of proceedings apparently depends on the discretion of the judge rather than the demand and needs of the claimant.²⁵ As a result, minority community members have very limited trust in the capacities of the justice system, which has a strong impact on their perception of their security and access to rights in general (see above comments). The Advisory Committee is deeply concerned by this lack of trust in the rule of law and points to the fact that the non-execution of judicial decisions and the excessive length of court procedures are the main shortcomings identified by the Ombudsperson in his 2011 Annual Report.²⁶

49. A high number of the pending court cases continue to relate to property issues and the restoration of property rights, and there is a strong perception among the public that courts are not paying sufficient attention to the illegal occupation of houses.²⁷ With regard to private

²² See Third Quarter 2012 statistics of the Judicial Council, at http://www.kgjk-ks.org/repository/docs/2012_Third_Quarter_Statistics_Report_on_the_work_of_Rregular_Court_287519.pdf.

²³ Only two additional judges were appointed, for instance, to deal with a backlog of 4 000 cases in Pejë/Peć region.

²⁴ In the wake of broader judicial reform, a new court structure has been introduced through the Law on Courts, which became effective on 1 January 2013, and is expected to alleviate some of the backlog in due course. The new law gives special attention to the ethnic and gender representation of judges, providing that 15% of judges in the Supreme Court and Court of Appeals should be from minority communities.

²⁵ The situation is exacerbated by the decreasing number of judges and court staff with sufficient skills to speak both official languages, see among others Milica Matijević, *Access to Justice for Internally Displaced Persons from Kosovo*, June 2012, http://www.pravnapomoc.org/web/access_to_justice.pdf.

²⁶ See Ombudsperson Institution Annual Report 2011, <http://www.ombudspersonkosovo.org>.

²⁷ The exact number of property-related cases that remain pending in first and second-instance courts is unclear. Estimates range from 18 000 - 20 000. See report on rights to restitution and compensation of damaged or destroyed property, July 2012, at http://www.pravnapomoc.org/web/2nd_Human_Rights_Report_Final.pdf.

property claims that relate to the period of the armed conflict, the Advisory Committee welcomes the fact that the Property Agency has completed over 35 000 cases²⁸ out of some 42 000 lodged by the end of 2007 and is beginning, jointly with the Kosovo* Police Service (KPS), to enforce its decisions, including through evictions.²⁹ It notes, however, that enforcement remains particularly problematic in the northern part of Kosovo*. This has an impact on the situation in south Mitrovicë/Mitrovica municipality, as many of the illegal occupants there actually own property in the northern part that is also illegally occupied. Another problem still surrounds the issue of repossession of socially owned property, even after adoption of relevant legislation,³⁰ as the cadastral records where occupancy rights were registered have yet to be returned from Serbia. In addition, a comprehensive policy and legislative response may be required to solve some property aspects, such as related to previously nationalised property that is in the process of being privatised, while claims of social occupancy rights have not yet been ascertained. The Advisory Committee notes that the Property Agency as a mass claims processing mechanism is not in a position to solve such cases and welcomes the appointment in August 2011 of a national property rights coordinator. It considers that he should receive all necessary support from the authorities and relevant international organisations to ensure that the very complex property issues that remain are comprehensively considered in line with relevant international standards and suitable steps are taken without undue delay.

50. The Advisory Committee remains in particular concerned by the access to rights issues faced by internally displaced persons. Despite the reportedly still high numbers of internally displaced,³¹ approximately 980 of whom are living in dire conditions in 38 collective centres, there are no special provisions to address the particular needs of IDPs during all phases of their displacement, apart from those generally relating to the facilitation of return. The return of IDPs in Kosovo*, however, constitutes only a small part of the overall return figures, which appears to indicate that return may not be a feasible or desirable option for many of the remaining IDPs.³² A large number of the remaining IDPs may therefore rather require assistance in the area of displacement in order to access social rights. Some remain registered as property owners, which prevents them from obtaining social assistance, despite the fact that their property is illegally occupied.³³ There is no institutional focal point for the promotion of the rights of IDPs apart from the MOCRs who focus mainly on the facilitation of return. The Advisory Committee considers that more efforts should be made to ensure that IDPs are suitably protected throughout all phases of their displacement and including as regards the facilitation of local integration where so desired.

²⁸ See Report of the Secretary-General of UNMIK to the Security Council, 4 February 2013.

²⁹ The *Kosovo Property Claims Commission* (KPCC), a quasi-judicial decision-making body within the Property Agency, has the mandate to resolve *conflict-related ownership and use rights claims with respect to private immoveable property involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 where the claimant is not now able to exercise such property rights*. The KPCC is authorised to confirm ownership and use rights claimed by parties, make orders for possession of the property, including eviction orders in relation to unlawful occupants, and grant, refuse or dismiss claims. See <http://www.eulex-kosovo.eu/en/justice/kosovo-property-claims-commission.php>.

³⁰ See Law 04/L-061 on sale of apartments in which there is tenure right, <http://www.assembly-kosova.org/?cid=2,191,815>.

³¹ UNHCR estimates indicate a total of some 17,700 IDPs in Kosovo* at the end of 2012.

³² The majority of registered IDPs with UNHCR are from Mitrovicë/Mitrovica region which, given its particularly fragile security situation, makes return unlikely in the foreseeable future.

³³ The Law on Taxes on Immoveable Property, however, recognises displacement by authorising the collection of taxes from the user rather than the owner of property. See Law No.03/L-204 of 7 October 2010, Article 5.

51. With regard to war crimes and missing persons, the Advisory Committee welcomes the establishment of an inter-ministerial working group in June 2012 on dealing with the past and reconciliation. The purpose of the working group is to deal with gross human rights and humanitarian law violations in the past, while taking into consideration the views of all communities, and to promote reconciliation and lasting peace by “ensuring accountability, serving justice,... facilitating truth-seeking, ..., and taking all measures needed to restore confidence in the institutions of the State and implementing the rule of law...”.³⁴ The Advisory Committee underlines the importance of such an initiative, which should be appropriately supported by relevant international organisations,³⁵ in order to promote a process of reconciliation and healing among all communities and restore trust in the institutions and the justice system.

Recommendations

52. The Advisory Committee urges the authorities again to take all necessary measures to reduce the continuing and immense backlog of court cases, many of which still relating to property issues, and to guarantee effective access to justice for all. Efforts to establish efficient, professional and independent judiciary and prosecution services must be intensified so as to ensure that public trust in the rule of law can develop.

53. The Advisory Committee further calls on the authorities to develop appropriate legislative and policy responses to rights issues that remain inadequately addressed, such as the protection of IDPs during all stages of displacement, as well as more complex issues related to property and compensation.

54. The Advisory Committee invites the authorities to take all necessary measures to support the inter-ministerial working group on dealing with the past and reconciliation in its important task of promoting inter-ethnic understanding and restoring trust in the justice system.

Full and effective equality of Roma, Ashkali and Egyptians

Recommendations from the two previous cycles of monitoring

55. In the previous monitoring cycles, the Advisory Committee urged the authorities to identify an adequate and swift solution for the Roma, Ashkali and Egyptian population of lead-contaminated camps in northern Kosovo*. In addition, it called for resolute and strategic measures to promote the effective equality of persons belonging to these disadvantaged communities in accessing employment and social services, as well as with regard to the issuance of identity documents.

Present situation

56. The Advisory Committee welcomes the fact that Osterode camp was finally closed at the end of December 2012, and all remaining residents relocated.³⁶ It further is pleased to observe that continued efforts are underway in 2013 to close the IDP camp in Leposavić/Leposaviq

³⁴ See http://www.zarekom.org/uploads/news/2012/06/i_2282/f_1/f_3053_0.pdf.

³⁵ See PACE Report *The situation in Kosovo* and the role of the Council of Europe*, DOC. 13088 of 7 January 2013, and Amnesty International *Time for EULEX to prioritise war crimes*, London, April 2012 at http://www.amnesty.eu/content/assets/260412_EULEX_Report.pdf.

³⁶ The Česmin Lug camp had already been closed in October of 2010. Activities were implemented by Mercy Corps through an EU funded project, the *Mitrovicë/a RAE Support Initiative Project (EU-MRSI)* and resulted in the resettlement of 587 persons from Osterode and Česmin Lug and 42 persons from Leposavić/Leposaviq camp, where 31 families (131 persons) remained at the end of 2012.

where living conditions are appalling, and encourages close consultation with the involved communities to ensure that their concerns and traditions are duly considered in the relocation process. It further expects that south Mitrovicë/Mitrovica authorities will alter their initial resistance to provide accommodation to families that are not originally from the municipality. The Advisory Committee further underlines that lead contamination continues to be an issue of grave concern, particularly among children, that must be closely monitored and adequately treated. According to Mercy Corps, 16 out of 229 affected children exhibited high contamination levels and received medical treatment, while the others were provided with vitamin supplements. Attention must, however, equally be paid to the long-term health impacts that have likely been caused by the prolonged exposure to lead contamination.

57. The Advisory Committee notes that one year after adoption of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities by the authorities, in December 2009, an Action Plan for the Implementation of the Strategy was endorsed, containing concrete measures to be taken by central and local institutions to address the identified challenges faced by the three communities in terms of inequality and social exclusion, and the lack of awareness of rights among the communities, relevant officials and the public at large. The Advisory Committee welcomes that the Action Plan also calls for more research and evaluation of data related to the living conditions of persons belonging to the three communities, and foresees measures to promote the specific cultural heritage, traditions and identity of the communities. The Plan contains a detailed timeline and budgetary estimates for its implementation but there is no separate budget through the Ministry of Finance. Allocations are made individually by relevant ministries as well as based on international donations. Implementation has, according to a number of reports, been sporadic and often dependent on individual initiatives rather than institutionally coordinated efforts.³⁷ The Advisory Committee notes recent efforts of the authorities to join the Decade of Roma Inclusion 2005-2015, which may provide for a regional exchange of experience, coordination and support for the implementation of the Action Plan.

58. The Action Plan emphasises the fundamental role of central-level coordination. However, the modalities in practice of the coordination between central and local levels appear unclear. The Ministry of Communities and Return chairs the inter-ministerial working group on the implementation of the Strategy, while the Deputy Prime Minister heads the inter-ministerial steering committee for the implementation of the Action Plan. The Advisory Office on Good Governance (AOGG) and the Office for Community Affairs under the Office of the Prime Minister have central responsibilities to ensure efficient co-operation among relevant ministries, with the AOGG chairing a technical working group that is also tasked to report biyearly on progress. Individual ministries have contributed to the implementation of the Action Plan (see below comments on Articles 12 and 15), but the lack of straightforward coordination and information exchange limits ownership and accountability and results in a disconnect between central institutions and local officials. Reportedly, some municipal authorities are not fully aware of the Action Plan and the responsibilities it entails for them, particularly with regard to participation, culture, media and information. Efforts must be made at central level to streamline and increase coordination so that municipal authorities are duly informed and instructed to perform according to their responsibilities under the Action Plan.

59. The Advisory Committee remains particularly concerned about access to documentation for persons belonging to the Roma, Ashkali and Egyptian communities, as it is still difficult for many individuals to provide the required evidence for registration at birth (parents' identity

³⁷ See, among others, OSCE Mission, *Implementation of the Action Plan on the Strategy for the Integration of the Roma, Ashkali and Egyptian Communities in Kosovo*, May 2011.

documents, legally registered residence, as well as fees) as some were never registered for generations. Additionally, the system of civil registration is unevenly applied. The legislation provides, for instance, that in the case of destroyed registers, statements by witnesses can be accepted. However, in the absence of clear guidance on the implementation of this procedure, municipalities continue to apply it in an inconsistent manner.³⁸ The Advisory Committee welcomes initiatives organised by civil society and supported by a number of municipalities to engage in awareness-raising campaigns and offer periods of free registration services for undocumented individuals, as also foreseen in the Action Plan. In view of the crucial disadvantages suffered through lack of documentation given the risk of statelessness, possible denial of access to health care, education and other public services, and problems in resolving issues of property restitution or compensation, such efforts must be expanded and concrete measures agreed in close consultation with community representatives to effectively reduce the number of affected individuals.³⁹

Recommendations

60. The Advisory Committee calls on the authorities to intensify their efforts towards the integration of the Roma, Ashkali and Egyptian communities by allocating appropriate resources from the Kosovo* Consolidated Budget and streamlining central coordination to ensure that all municipalities are informed of and instructed to implement the Strategy and Action Plan. Municipal authorities must renew their commitment to ensure full and unhindered access to personal identity documents for all persons belonging to Roma, Ashkali and Egyptian communities, in particular birth certificates.

61. The Advisory Committee further urges the authorities to take all necessary steps to facilitate the closure of the last IDP camp in Leposavić/Leposaviq without further delay and to ensure that appropriate medical treatment is provided to all persons in need.

Article 5 of the Framework Convention

Support to preserve the cultures and identities of minority communities

Recommendations from the two previous cycles of monitoring

62. In the previous monitoring cycles, the Advisory Committee called on the authorities to increase their efforts to protect minority religious sites and to further promote the on-going reconstruction works. In addition, it encouraged the authorities to ensure continued support for the preservation and development of cultures of minority communities, including the numerically smaller ones, and reiterated that all financial support for the activities of minority community organisations should be allocated in a transparent and participatory manner.

Present situation

63. The Advisory Committee notes that under the mandate of the Reconstruction Implementation Commission, considerable progress has been made with works considered completed in over half of the identified 34 religious or cultural sites that were damaged during

³⁸ *Civil Rights Programme Kosovo* and *Kosovo Foundation for Open Society*, [Civil registration and civil status registration in Kosovo municipalities-unification of procedures and practices](#), Pristina, May 2012.

³⁹ According to a 2009 study, around 40% of children of Roma, Ashkali and Egyptian returnees were not registered in birth registers, while 15% of children of families of Roma, Ashkali and Egyptian origin who had not been displaced lacked registration. See UNICEF, *Integration subject to conditions – a report on the situation of Kosovan Roma, Ashkali and Egyptians in Germany and after their repatriation to Kosovo*, 2010. http://www.unicef.org/kosovo/UNICEF_Birth_Registration_2009_English.pdf.

clashes in March 2004. It welcomes the indication by the Minister of Culture, Youth and Sport during the visit that the budget to complete reconstruction at the remaining sites would be allocated, and acknowledges the important role provided by the EU facilitator, particularly since March 2012.⁴⁰ Relevant legislation was adopted in April 2012 to protect and preserve minority cultural heritage in the village of Hoçë e Madhe/Velika Hoča in Rahovec/Orahovac municipality as well as in Prizren Historic Centre.⁴¹ Implementation of the Law has been delayed, however, by the local majority community, despite efforts by the MOCR of Rahovec/Orahovac municipality. With the closure of the International Civilian Office, the Assembly adopted the creation of an Implementation and Monitoring Council (IMC), with the mandate to monitor and facilitate the implementation of 45 special protected zones around religious and cultural heritage of the Serbian Orthodox Church.⁴² The IMC will work with an EU facilitator under the authority of the EU Special Representative. According to national and international interlocutors, co-operation with the KPS, which has taken over the protection of most of these sites, has been constructive, with security duly being provided to the identified sites.

64. The Advisory Committee regrets, however, the absence of an institutionalised system to assist minority communities, particularly the numerically smaller ones, with the preservation and development of their cultures. While the possibility exists to apply to the Ministry of Culture, the Office of Community Affairs under the Prime Minister as well as the municipalities for grants, only few representatives of minority communities appear to be aware of this possibility and they seem to have been made aware through personal contacts rather than institutionally run awareness-raising.⁴³ In addition, there is no clear mechanism or transparent criteria for the allocation of such support, which makes it difficult for minority communities to engage in longer-term planning and activism which would be necessary to sustainably and comprehensively promote their cultural identity. This lack of transparency is further adding to an impression by persons belonging to numerically smaller minority communities that the only minority culture and identity that is being promoted and protected is the Serb culture. The Advisory Committee considers that institutionalised mechanisms must be established, in close consultation with minority community representatives, to ensure that the allocation of support for minority cultures is based on transparent criteria and accessible to all communities.

65. In addition, the Advisory Committee notes with deep concern the absence of a cultural policy that clearly aims for a multicultural society. While the Ministry of Culture is engaged in some activities aimed at the promotion of the cultural identities of minority communities, there seems to be no institutional effort to prioritise the promotion of diversity by ensuring that

⁴⁰ An independent expert assessment of May 2012 finds that major architectural works are still required in four sites and that minor repair works have to be undertaken in 12 sites. The Reconstruction Implementation Commission was supported through the EU-Council of Europe Joint Programme Support to the Promotion of Cultural Diversity in Kosovo*. A follow-up joint programme continues to provide important assistance through technical co-operation activities aimed at the promotion of intercultural dialogue. For further background on the Reconstruction Implementation Commission, see:

http://issuu.com/councilofeurope/docs/ric_for_serbian_orthodox_religious_sites_in_kosovo?mode=window&backgroundColor=%23222222.

⁴¹ See Law No.04/L-062 on the village of Hoçë e Madhe/Velika Hoča of 20 April 2012, [http://gazetazyrtare.rks-gov.net/Documents/Ligji%20p%C3%ABr%20Fshatin%20Ho%C3%A7%C3%AB%20e%20Madhe%20\(anglisht\).pdf](http://gazetazyrtare.rks-gov.net/Documents/Ligji%20p%C3%ABr%20Fshatin%20Ho%C3%A7%C3%AB%20e%20Madhe%20(anglisht).pdf).

⁴² The Implementation and Monitoring Council consists of five members, the Ministry of Culture, Youth and Sport, the Ministry of Environmental and Spatial Planning, the European Union, the OSCE, and the Serbian Orthodox Church. It has taken up its functions under the leadership of the EU Facilitator. See for background on the mandate Progress Report of the International Civilian Office *Implementation of Special Protected Zones for Religious and Cultural Heritage in Kosovo*, September 2011, http://www.ico-kos.org/data/Image/SPZ_Progress_Report_Final_EV.pdf.

⁴³ A small scale project to publish a book on Ashkali culture and traditions, for instance, was implemented thanks to the support received by the Deputy Minister of Culture. There are no established or institutionalised procedures, though, through which community organisations could channel their project proposals.

minority cultures are welcome and celebrated in the public sphere. As a result, evidence of minority cultures is increasingly uncommon in the capital and most other urban centres and mainly isolated in minority enclaves. In addition, most endeavours organised by the Ministry, including as regards youth, appear to be organised in one or the other official language, thereby targeting each language group separately, without attempting to promote the inter-action between members of different communities in society. The Advisory Committee considers that platforms must be created, including through an adequate cultural policy, for different cultures and identities to meet and interact so that a new civic identity that is unique to Kosovo* may develop based on tolerance, multiculturalism, and appreciation for diversity. To this aim, it is further important to encourage persons belonging to minority communities to enjoy their culture, identity and traditions in public by ensuring that their cultures are known and appreciated by wider society. All cultural or youth events should be accessible to members of all communities, including through the use of both official languages, to ensure that members of both language groups interact and have opportunities to learn the other language.

Recommendations

66. The Advisory Committee calls on the authorities to pursue their efforts towards the effective protection and preservation of minority cultural heritage through swift implementation of relevant legislation and the allocation of adequate resources.

67. The Advisory Committee further calls on the authorities to establish a transparent and effective mechanism for the allocation of support and preservation of minority cultures and identities which is equally accessible to all minority communities. Efforts must be made to involve minority representatives in the decision-making process regarding the allocation of such support.

68. The Advisory Committee urges the authorities to develop a comprehensive cultural policy aiming at the creation of a multicultural society and the promotion of diversity, targeting in particular young people and urban centres.

Article 6 of the Framework Convention

Inter-ethnic dialogue and tolerance

Recommendations from the two previous cycles of monitoring

69. In the previous monitoring cycles, the Advisory Committee noted tense and fragile inter-ethnic relations and urged the authorities to elaborate and implement a comprehensive long-term strategy for reconciliation and dialogue in consultation with the various communities. In addition, it pointed to the important role played by the media in the promotion of inter-ethnic understanding in society and invited the authorities to ensure, in full respect of the editorial independence of the media, that the dissemination of stereotyping and intolerance was combated.

Present situation

70. The Advisory Committee notes with deep concern that there has been no progress regarding the relations between ethnic groups. On the contrary, levels of inter-ethnic understanding and tolerance seem to be decreasing, particularly in urban centres and particularly among young people. Persons belonging to the elderly minority population reported that their relations with members of the majority population are particularly difficult and tense when young people are involved who often don't speak minority community languages and who are

reported to openly and quickly question the very presence of minority communities in ‘their’ Kosovo* as soon as any argument, for instance between neighbours, arises. The few initiatives that exist to bring together representatives from different groups are mainly organised by committed individuals or by NGOs, often with international support. However, there is insufficient appreciation among central authorities for the importance of inter-ethnic trust and understanding for the creation of a stable and safe environment, as the engagement in comprehensive or concrete efforts to promote inter-ethnic communication and interaction appears not to be a priority among authorities. The Advisory Committee is deeply concerned by the situation which must, it considers, be urgently addressed, among others through appropriate cultural and educational reforms (see comments on Articles 5 and 12), and comprehensive efforts targeting society at large, including via the media.

71. The Advisory Committee notes with concern the recent reporting of Radio Television Kosovo* (RTK) related to partially violent manifestations surrounding the monastery in Deçan/Dečani municipality, which appear biased towards the nationalist views of young protesters without providing sufficient background on the fact that the Supreme Court held in favour of the Monastery. Similar concerns have also been voiced regarding RTK’s coverage of the grave incidents of vandalism against Orthodox cemeteries which has partially been interpreted as inflammatory and containing hate speech. The Advisory Committee reminds the authorities of the significance of objective and independent media in promoting tolerance and inter-ethnic understanding in society and, conversely, of the dangerous effect that unprofessional reporting may have in terms of inciting hostility and tension (see further comments on Article 9). Furthermore, the Advisory Committee is deeply concerned by the lack of respect towards minority communities exhibited by some politicians, including during sessions in the Assembly.⁴⁴ The expression of such intolerant attitudes by high-ranking officials towards minority communities and their established rights, which is moreover directly conveyed to the public by live broadcast, can but serve as a negative example and have a harmful influence on levels of tolerance towards persons belonging to different ethnic groups in society.⁴⁵ In addition, it casts doubt over the declared aim of the authorities to develop a multi-ethnic entity with a unique civic identity that is shared by members of all communities. The Advisory Committee welcomes in this context again the establishment of the inter-ministerial working group on dealing with the past and reconciliation. It considers that this is a particularly noteworthy initiative towards the promotion of inter-ethnic trust and understanding and should receive all necessary political and financial support.⁴⁶

72. The Advisory Committee acknowledges that the lack of clarity surrounding the status and on-going negotiations related to the north continue to have a strong and immediate impact on inter-ethnic relations throughout Kosovo*.⁴⁷ It gained the impression during its monitoring visit that a number of officials view the enjoyment of minority rights to be conditioned upon status recognition. It reminds the authorities that international minority rights form an integral part of human rights. Their effective implementation can therefore not be made dependent on other factors. While acknowledging the hardening positions among the public on both sides, central and local authorities must break the negative cycle and actively and comprehensively

⁴⁴ Deliberations in the Assembly are reportedly usually held only in one official language, Albanian, with interpretation provided only when a deputy presents a statement in Serbian language.

⁴⁵ See also OSCE High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies*, November 2012.

⁴⁶ The levels of co-operation shown so far by families of missing persons from all ethnic groups in their common goal of finding out the truth is encouraging in this regard.

⁴⁷ International and national interlocutors of the Advisory Committee referred to a marked increase in tension and hostility in response to any development that is considered adverse in regional negotiations.

engage in the promotion of inter-ethnic communication and tolerance. Concerted efforts must be made through immediate follow-up and sanctioning to ensure that political discourse does not abuse inter-ethnic relations. In addition, individuals that engage with the other group or try to promote tolerance and mutual understanding must be endorsed and publicly promoted as role models rather than degraded as “traitors” to their own community.

Recommendations

73. The Advisory Committee urges the authorities again to devise, without further delay, a comprehensive strategy to promote inter-ethnic dialogue and understanding among different groups. All efforts must be made to closely involve representatives of communities in the development and implementation of such a strategy, which must be closely coordinated among all relevant ministries at central and local level.

74. The Advisory Committee further urges the authorities to condemn promptly and unequivocally all expressions of intolerance against minority communities in public discourse and to institute a good example to the public through consistent implementation of community rights, such as related to language rights, in public events.

Ethnically motivated crime and hostility

Recommendations from the two previous cycles of monitoring

75. In the previous monitoring cycles, the Advisory Committee urged the authorities to improve the system of data collection on the identification, investigation and prosecution of ethnically motivated offences in order to address more effectively the continued perceptions of impunity. It further encouraged the authorities to develop comprehensive hate crime legislation and to increase efforts to promote the population’s trust in law-enforcement and the judiciary, among others by targeted awareness-raising and training activities.

Present situation

76. The Advisory Committee notes with concern that, after a drop from 2008 to 2009, the number of security incidents affecting minority communities is reported to have increased overall in the last years, particularly in some areas and particularly directed against the Serb population. Figures vary depending on the methods of reporting used by national and international entities. However, approximately 2 000 incidents were reported to UNMIK between January and October 2012, of which over 70% were directed against Serbs and the highest number in urban centres and Pejë/Peć region. The majority of the incidents relate to theft, woodcutting, and damage or usurpation of property. However, grave incidents involving the stoning of buses transporting school children and bodily harm continue to be equally reported and play an important role in maintaining an overall unfavourable perception of the security situation among minority communities. The number of incidents involving assault as well as vandalism against cemeteries and religious sites seemed, according to international and national observers, generally to have decreased in 2012.⁴⁸ The Advisory Committee further notes with deep concern reports of a renewed upsurge of incidents in December 2012 and January 2013 connected to the celebration of Orthodox Christmas in Gračanica/Gračanice and

⁴⁸ Initiatives have, for instance, been taken to clean Serb Orthodox graveyards in Fushë Kosovë/Kosovo Polje and surrounding villages, as well as in Pejë/Peć and Lipjan/Lipljan municipalities and in the capital in 2011 and 2012.

Gjakovë/Đakovica, as well as the reported desecration of 58 tombstones at the local Orthodox cemetery of Fushë Kosovë/Kosovo Polje.⁴⁹

77. Given the generally low trust in the prosecution services and the lack of available legal advice, particularly in isolated regions, many victims still prefer not to lodge a case in court. In addition, the Advisory Committee heard that the fear of reprisals still prevents some victims from coming forward, particularly among isolated returnee communities. While the perception of the security situation among minority communities appears to vary depending on the age and social status of the individual, the overall assessment of the situation remains unfavourable and fearful, despite concerted efforts by the KPS (see comments below).⁵⁰ The Advisory Committee welcomes the commitment shown by some municipal authorities to break the climate of fear. In municipalities where community platforms to discuss and address security related incidents, such as the Municipal Community Safety Councils or Local Public Safety Committees, were established, such initiatives have been successful in raising awareness of the incidents and reassuring affected communities.⁵¹ It is equally important that municipal authorities take all security incidents seriously and swiftly follow up with public statements condemning inter-ethnic hostility and adequate measures to prevent such incidents in the future.

Recommendations

78. The Advisory Committee urges the authorities to fight inter-ethnic crime and hostility more consistently and ensure that any incidents against members of minority communities are taken seriously by relevant municipal leaders and promptly and adequately followed up and sanctioned. Municipal safety councils should be set up in all municipalities in line with relevant legislation and instructions and in close consultation with representatives of all communities.

79. The Advisory Committee further urges all relevant authorities to condemn publicly and promptly all incidents of vandalism against religious sites and graveyards of any minority community.

Law enforcement

Recommendations from the two previous cycles of monitoring

80. In the previous monitoring cycles, the Advisory Committee urged the authorities to take vigorous measures to put an end to the targeting of cars with Serbian plates that persisted within the KPS road-control activities. In addition, it called for efforts to remove obstacles for persons belonging to minority communities to obtain driving licences.

Present situation

81. The Advisory Committee welcomes the efforts made by the KPS to increase human rights awareness and sensitivity towards minority community concerns among its agents. It is in particular pleased to note the adoption of the Community Policing Strategy and Action Plan 2012 – 2016 in autumn 2012, which testifies to the intention and commitment of the KPS to

⁴⁹ Another series of incidents where tombstones were partially gravely damaged at Orthodox graveyards was reported in January 2013 in Klokot-Vrbovac/Klllokot-Vërboc, in Plemetin/Plementina and Milloshevë/Miloševo in the municipality of Obiliq/Obilić, in Prelluzhë/Priluzhje in Vushtrri/Vučitrn municipality, in Suvo Grilo/Syriganë in Skenderaj/Srbica municipality and in Prizren.

⁵⁰ The grave incident of a double-murder that occurred in Ferizaj/Uroševac municipality in July 2012, for instance, decidedly increased fears among minority communities throughout Kosovo*.

⁵¹ All municipalities are required by law to establish Municipal Community Safety Councils, chaired by the Mayor. However, the Councils do not exist in all municipalities. See for a comprehensive analysis of the security situation in return sites OSCE Mission, *An Assessment of the Voluntary Returns Process in Kosovo*, October 2012.

engage in partnerships with communities and help establish a safer environment for members of all communities.⁵² Independent observers agree that the performance of KPS and its responsiveness to security incidents has improved overall. Targeted efforts have been made in areas experiencing high numbers of security incidents involving minority communities, such as in Pejë/Peć region, to introduce regular patrols, establish surveillance equipment in particularly exposed locations, and establish community liaison officers who maintain regular contact with the communities.⁵³ The Advisory Committee also notes that the KPS has made concerted efforts to provide security to religious sites which must, however, be attentively pursued further.

82. Overall, the Advisory Committee was pleased to note that most representatives of minority communities referred positively to the KPS and expressed that they trusted their efforts, evidenced also by more comprehensive reporting methods.⁵⁴ The Advisory Committee commends the decision by the KPS to collect data on all incidents affecting minority communities and not only on those for which ethnically based motivation is proven during a subsequent police investigation. This increased attention paid by the KPS to the concerns and fears of persons belonging to minority communities helps to boost confidence among the population in the work of the police and thereby also contributes to decreasing ethnically motivated crime and hostility. It is imperative, however, that the investigations of the KPS are appropriately and swiftly followed up by prosecution and judiciary services to sustainably reinstall trust in the criminal justice sector overall. The latter, however, is still viewed with grave suspicion by members of minority communities, due to the tremendous backlog of cases and the apparent lack of interest in redressing the situation amongst the prosecution and judiciary services (see above comments on Article 4).

83. While continued efforts have also been made to ensure that minority communities are adequately represented among the KPS, numbers are reportedly still insufficient, particularly as regards staff with Ashkali, Egyptian and Roma background. In addition, efforts must be made to increase the deployment of officers with minority background to particular areas of concern. Out of 700 police officers in Pejë/Peć region, for instance, reportedly only nine are representatives of the Serb community, which reduces trust in the investigations among victims and also presents obstacles from a language point of view. The Advisory Committee further notes with concern reports of continued police brutality and excessive use of force by some officers during police operations, and reminds authorities that such incidents must be swiftly and comprehensively investigated and appropriately sanctioned.⁵⁵ It notes in this regard reports of an increase in processed cases by the Police Inspectorate, which may enhance public confidence in the willingness of the KPS to address complaints.⁵⁶

Recommendations

84. The Advisory Committee encourages the authorities to pursue their efforts to reassure minority communities through proactively implementing the new community policing

⁵² See Community Policing Strategy at <http://www.kosovopolice.com/?page=2,16>.

⁵³ The security situation in Istog/Istok and Klinë/Klina municipalities is, for instance, reported by UNMIK representatives to have improved substantially after the introduction of new security measures by the KPS.

⁵⁴ See also Morgan Greene, Jonathan Friedman, Richard Bennet *Rebuilding the Police in Kosovo*, Foreign Policy, 18 July 2012, referring to surveys made in 2009 and 2010 that declared the KPS to be the most trusted institution among the public.

⁵⁵ See, among others, USDOS Country Report on Human Rights Practices 2011. The Advisory Committee notes in particular the serious allegations of police brutality against a group of Serbs detained on 7 January 2013 in Gračanica/Graçanicë. See Report of the OSCE Head of Mission to the OSCE Permanent Council, 7 February 2013.

⁵⁶ See Report of the Secretary-General of UNMIK to the members of the Security Council S/2012/818, 8 November 2012, <http://reliefweb.int/sites/reliefweb.int/files/resources/N1256514.pdf>.

methodology and maintaining close dialogue with representatives of affected communities. Religious sites of minority communities must be appropriately protected to prevent incidents of vandalism.

85. The Advisory Committee further calls on the authorities to increase their efforts to recruit, retain, and promote law enforcement staff of minority origin and to ensure that officers with relevant language background are deployed to areas of concern. All misconduct or failure to act must be swiftly and effectively investigated and sanctioned.

Article 7 of the Framework Convention

Freedom of assembly, association, and expression

Recommendations from the two previous cycles of monitoring

86. In the previous monitoring cycles, the Advisory Committee encouraged the authorities to make further efforts to ensure the full implementation of the rights guaranteed in Article 7 of the Framework Convention and relevant international standards, in particular by addressing security concerns and by removing remaining obstacles to the freedom of movement.

Present situation

87. The Advisory Committee notes with concern that security considerations still limit the freedom of movement in specific areas of Kosovo*, affecting in particular members of minority communities living in enclaves and preventing them from enjoying freedom of assembly and association as protected by Article 7 of the Framework Convention. The Advisory Committee is further concerned by the increasing number of reports pointing to political interference and lack of independence from the authorities within public media providers. This results in self-censorship and sometimes harassment of journalists and has a negative effect also on the freedom of expression enjoyed by persons belonging to minority communities in the media profession.⁵⁷ It is pleased to note, however, that provisions of the Criminal Code that criminalised defamation and could further have limited the freedom of expression of journalists by placing pressure on them to reveal their sources were removed from the Criminal Code in October 2012, following campaigns by media rights activists in summer.⁵⁸

Recommendation

88. The Advisory Committee calls again on the authorities to ensure the enjoyment of rights as protected by Article 7 of the Framework Convention by addressing the continued limitations to the freedom of movement and promoting the freedom of expression, including in the media.

⁵⁷ The Association of Professional Journalists reported 33 instances in 2011 of officials, business interests or media owners abusing press freedom, including through verbal threats against journalists and their agencies, pressure on outlets not to publish stories, and obstruction of reporters' work. See Freedom House, *Freedom of the Press* 2012 Report. The question surrounding the financing of RTK remains unresolved.

⁵⁸ See, among others, <http://www.hrwo.org/news/2012/06/27./kosovo-new-law-puts-media-freedom-risk>.

Article 8 of the Framework Convention

Religious freedom

Recommendations from the two previous cycles of monitoring

89. In the previous monitoring cycles, the Advisory Committee called on the authorities to address the existing obstacles to the exercise of the right of persons belonging to national minorities to manifest their religion or belief, by promoting tolerance and respect for religious diversity in society and by preventing any alterations regarding religious property or denominations against the will of the religious communities concerned.

Present situation

90. The Advisory Committee observes that authorities continue to pursue a secular approach in line with the 2006 Law on Religious Freedoms which provides for equal rights to all religious communities. It notes requests by a number of religious communities, though, to address the absence of a legal mechanism to register religious organisations and obtain legal status.⁵⁹ It welcomes that the Orthodox Seminary, Bogoslovija Svetih Ćirila I Metodija in Prizren was reopened in September 2011 and that 20-25 students have enrolled in studies in the Serbian Orthodox Church of Sveti Đorđe in Prizren, reportedly without any obstacles or security concerns. It further welcomes the constructive interaction between the Serbian Orthodox Church and the local authorities in Pejë/Peć municipality and the organisation of several inter-faith academic and educational events that have taken place in the Peć Patriarchate. The Muslim community has repeatedly requested to be provided with a new mosque in the centre of Prishtinë/Priština, which has so far been rejected by authorities. The Advisory Committee further notes the request of the Muslim community to introduce religious education as a new subject in schools and points out that the multi-faceted study of religions in schools can play an important role in the promotion of inter-ethnic understanding and tolerance towards the beliefs of all communities and is not, as such, contrary to the principle of secularity.

91. The Advisory Committee notes with deep concern reports of intimidation experienced by persons belonging to minority communities, including in the capital. Persons belonging to Orthodox communities reported that they face frequent harassment and sometimes violence when manifesting their religious beliefs. The upsurge of security incidents directed against Orthodox cemeteries and other religious monuments in early 2013 (see above comments on Article 6), including in relation to the Supreme Court judgment that rejected property claims against Visoki Dečani Monastery,⁶⁰ exacerbates this climate of fear and has a direct impact on the exercise of the right of persons belonging to minorities to manifest their religious beliefs in line with Article 8 of the Framework Convention.

Recommendation

92. The Advisory Committee calls on the authorities to continue to pursue a secular approach and intensify their efforts to ensure that the rights of persons belonging to all religious communities, including numerically smaller ones, to manifest their religions and beliefs are duly protected.

⁵⁹ See, among others, 2011 International Religious Freedom Report, USDOS, and Annual Report of the Ombudsperson 2011, page 55.

⁶⁰ See <http://eulex-kosovo.eu/en/pressreleases/0391.php>.

Article 9 of the Framework Convention

Access of minority communities to print and broadcast media

Recommendations from the two previous cycles of monitoring

93. In the previous monitoring cycles, the Advisory Committee encouraged the authorities to remove continuing obstacles to access of persons belonging to all minority communities to public broadcast media throughout the territory and to ensure that sufficient time for minority language media was allocated in programming, as stipulated in the Law on Radio Television. It further called on the authorities to increase support for the production of minority media as well as minority programmes in mainstream media in line with transparent criteria and in consultation with the minority communities concerned, and to pay increased attention to the effective representation of minority concerns within media boards and supervisory mechanisms.

Present situation

94. The Advisory Committee notes the overall favourable national legislation concerning minority language media.⁶¹ Implementation, however, remains incomplete due, among others, to continued lack of coverage of public broadcasting in remote areas, such as in Dragash/Dragaš, which is inhabited in significant numbers by minority communities. According to the Independent Media Commission (IMC), RTK broadcasts around 15% of its TV and radio programmes in minority languages. In addition, five out of 21 licensed TV channels broadcast in Serbian, and one in Turkish, and there are 26 private radio stations in Serbian, three in Bosnian, two in Turkish, two in the Gorani language and one in Romani.⁶² Representatives of minority communities contend, however, that the quality of the reporting and programming in minority languages is often low and that more attention must be paid to the recruitment and training of qualified media professionals with minority background in all programmes. A second public television channel broadcasting in Serbian and dedicated also to the languages and concerns of numerically smaller minority communities is expected to be established in the course of 2013, which is welcomed by most members of minority communities. However, some representatives expressed scepticism towards the independence and professionalism of the IMC following changes to its composition and mandate in April 2012. The Advisory Committee indeed expects that the IMC will take appropriate steps to review RTK's reporting methods related to inter-ethnic incidents (see above comments on Article 6).

95. The Advisory Committee welcomes the fact that the Fund for Support to Minority and Multi-Ethnic Media and Other Disadvantaged Groups has finally been constituted and that some 30 beneficiaries were selected to receive grants in 2011 and 2012 by the committee managing the fund. It regrets, however, to note that access to print and broadcast media in their languages of persons belonging to numerically smaller communities remains difficult, particularly for numerically smaller communities living outside their enclaves, such as in the capital. A request made by Ashkali and Egyptian representatives to RTK for the inclusion of programming dedicated to their communities remained unanswered by the end of 2012. A Turkish language channel in Prizren has received no support since 2008 when international aid was discontinued

⁶¹ See Article 59 of the Constitution and the 2006 Law on Radio and Television Broadcast, which stipulates in Article 6 that the Public Service Broadcaster (RTK) shall dedicate not less than 10% of its budget and not less than 15% of its programming to minority communities in their respective languages.

⁶² See *Draft Strategy Transition from Analogue to Digital Broadcasting in Republic of Kosovo*, 27 December 2012 at <http://www.kpm-ks.org/?mod=materiale&id=613>. Community representatives report, however, that there is only one Gorani language radio station, Radio 'Bambus' which is based in Restelica/Restelicë but only covers two villages.

and there is still no Kosovo*-wide radio programming in Romani despite continued efforts by Roma representatives. Overall, it appears that the awareness of authorities of the importance of minority language media for the preservation and development of minority identities, cultures and languages, as well as for the overall appreciation of diversity in society, remains insufficient.

96. In addition, the Advisory Committee is concerned by reports that members of minority communities still do not feel accurately reflected in mainstream media, and do not consider that their concerns are sufficiently or adequately covered. More attention must be paid to ensure that minority languages are adequately represented in broadcast and print media and that minority representatives are appropriately involved in the decision-making processes related to content of programming, management and oversight, including as concerns the allocation of grants and subsidies. The Advisory Committee regrets that efforts towards bilingual media, aiming to reach a broader audience and promote inter-ethnic understanding through the creation of common media spaces, are still rare.⁶³ The Advisory Committee underlines the role played by media in influencing attitudes and conceptions in society and points in particular to the importance of bridging ethnic and language divides through the targeted development of multilingual media outlets, including through the subtitling of programmes into the other official or minority languages, as a means of bringing communities closer together.

Recommendation

97. The Advisory Committee calls on the authorities to increase their efforts to provide adequate access to print and broadcast media to persons belonging to minority communities in their own languages. Financial and training support must be equally available to representatives of all communities and more attention paid to the contribution of bilingual and multilingual media outlets to promote inter-ethnic understanding and tolerance in society.

Article 10 of the Framework Convention

Use of minority languages in the public sphere

Recommendations from the two previous cycles of monitoring

98. In the previous monitoring cycles, the Advisory Committee urged the authorities to allocate adequate financial and human resources to ensure the effective implementation of the language legislation and the functioning of the Language Commission at central and municipal levels. More efforts were called for to raise the awareness of persons belonging to minority communities of their language rights and available complaint mechanisms according to the Language Law, and to ensure that sufficient training was provided to civil servants to improve their language capacity in both official languages and languages in official use, including for adequate use in judicial proceedings.

Present situation

99. The Advisory Committee notes with deep concern that levels of implementation of the language legislation appear to have further deteriorated since the second cycle of monitoring. It was in particular alarmed to observe the gradual establishment of mono-lingualism in many municipalities throughout Kosovo* with only few exceptions of municipalities or public offices

⁶³ The Advisory Committee notes in this context a bilingual newspaper that appears monthly in Gjilan/Gnjilane municipality. See for further reference to the crucial role played by minority language media for the promotion of social cohesion, *Third Thematic Commentary of the Advisory Committee on the FCNM on the language rights of persons belonging to national minorities*, May 2012. http://www.coe.int/t/dghl/monitoring/minorities/default_en.asp.

using both official languages and relevant minority languages in line with the legislation.⁶⁴ While the Law on the Use of Languages adopted in 2006 remains one of the most ambitious in Europe in terms of applicable thresholds for the use of minority languages in the public sphere, the Advisory Committee regrets the apparent lack of will exhibited in many municipalities to provide even basic services in the languages of minority communities. It further considers that the fundamental disconnect between a very advanced legislation on the one hand and distinct defiance by some municipal authorities to implement basic guarantees even as regards the other official language on the other inevitably creates frustration and disappointment among minority communities, thereby further promoting tension. The Advisory Committee is deeply concerned in this regard by reports of minority representatives that they feel intimidated in some locations to use their languages in public. The situation is further exacerbated by the fact that it is increasingly difficult to recruit public servants with proficiency in both official languages, let alone relevant minority languages (see below comments on Article 12 and 14).

100. The Advisory Committee further notes that the Language Commission, which was established in 2007, failed to fulfil its mandate of overseeing implementation of the legislation and offering a complaints mechanism due to lack of adequate resources. It underwent reform in 2012 and has been replaced by the Office of the Language Commissioner, which is expected to be functional as of 2013.⁶⁵ Pending the appointment of the new Commissioner, efforts were made, among others with the support of civil society, to engage in some awareness-raising activities as well as the training of civil servants in both official languages.⁶⁶ The Advisory Committee welcomes the stated approach of developing incentives for the use of languages rather than applying fines and other sanctions. It notes, however, that the Commission has thus far received only two complaints. Far-reaching efforts must therefore be made to ensure that officials as well as representatives of minority communities and the population at large are duly made aware of their language rights and available remedies in case of violation. In addition, the Office of the Language Commissioner should receive all necessary financial and human resources, including as regards professional and multilingual staff.

101. The Advisory Committee reminds the authorities that the implementation of Article 10.2 of the Framework Convention related to the use of languages in contacts with administrative authorities requires an environment that is generally conducive to the use of minority languages. In this regard, the recruitment of staff able to communicate directly with the public in minority languages is preferable over the hiring of interpreters, as delays and possible misunderstandings caused through indirect communication constitute a deterrent for the affected individual to use a minority language in the first place.⁶⁷ Efforts must rather be made to encourage the active use of minority languages to ensure that they remain present in the public sphere as an expression of a diverse society.⁶⁸ To this end, it is of utmost importance that civil servants are provided with

⁶⁴ Articles 2.3 and 2.4 of the Law on the Use of Languages stipulate that the mother tongue of communities who constitute at least 5% of the population in a municipality shall have the status of official language in the municipality, in equal use with the other official languages; it shall have the status of a language in official use in municipalities where the community constitutes at least 3% of the population. See for a comprehensive overview of the implementation of the law OSCE Mission, Third Community Rights Assessment Report, July 2012, as well as Ombudsperson Annual Report 2011.

⁶⁵ After the first Language Commissioner resigned after only a few months in office, a new Commissioner was appointed in December 2012.

⁶⁶ See also ECMI at <http://www.ecmikosovo.org/index.php/current-projects/114-integration-through-learning-of-official-languages-in-kosovo>.

⁶⁷ Ibid.

⁶⁸ Article 1.1.iv of the Law on the Use of Languages establishes as one of the purposes of the Law: “to ensure... the multilingual character of Kosovo society, which represents its unique spiritual, intellectual, historical and cultural values.” See the Law at http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L37_en.pdf.

adequate language training and that language proficiency is also duly taken into account during recruitment. The Advisory Committee further notes with concern that many institutions, particularly at municipal level, do not provide official documents in both official languages and that the available translations into the other official language or minority community languages in official use are often ridden with grammar and spelling mistakes, as well as transliterations that contain an ‘Albanisation’ of the language.⁶⁹ The Advisory Committee heard reports from representatives of minority communities who had to engage translators to understand decisions of minor offence courts that had, contrary to Articles 12-14 of the Language Law, not been translated into the other official language.

102. In addition, the Advisory Committee is concerned by the divergence in levels of implementation among different municipalities as well as vis-à-vis different languages, which raises issues of compatibility with Article 4 of the Framework Convention. The Advisory Committee expects in this context that following the census in 2011, all minority community languages spoken by 3 or 5% of the population will be considered, in close consultation with community representatives, to be recognised as languages in official use or official languages in relevant municipalities, as provided by the Law on the Use of Languages.⁷⁰ The Advisory Committee reiterates its position that the protection contained in Article 10 of the Framework Convention includes the alphabet as integral part of any language.⁷¹ The Serbian language is not spelled in Cyrillic but in Latin letters by Kosovo* authorities. Given the context where other minority communities do not use the Cyrillic alphabet, the Advisory Committee considers that close consultations must be held with representatives of all relevant communities to establish a pragmatic solution that is in line with internationally recognised standards, particularly the Framework Convention.

Recommendations

103. The Advisory Committee urges the authorities to take all necessary measures to enhance the implementation of the Law on the Use of Languages throughout Kosovo*. Municipal authorities must be instructed and provided with suitable guidance on how to ensure the language rights of persons belonging to minority communities with the available resources. Efforts must be made without delay to encourage and promote the active use of minority languages in public, including in official settings.

104. The Advisory Committee further calls on the authorities to provide the Office of the Language Commissioner with all necessary human and financial resources to effectively exercise its functions. Far-reaching awareness-raising campaigns must be conducted throughout Kosovo* to ensure that the relevant officials as well as the public at large are duly informed of their rights and available legal remedies. Language proficiency of civil servants in official languages and those in official use must be made a priority, including during recruitment, and suitable training courses must be offered.

⁶⁹ In Dragash/Dragaš municipality, for instance, the Albanian suffix ‘Sharr’ (meaning mountainous) is added in official documents and correspondence, often instead of the name of the municipality.

⁷⁰ Gorani, which is sometimes referred to as ‘Našinski’, has until now not been considered official language in Dragash/Dragaš municipality. According to micro-data available at the Agency of Statistics, however, almost 30% of the population consider themselves Gorani and indicated Gorani as mother tongue during the 2011 census.

⁷¹ See, among others, ACFC *Third Thematic Commentary on language rights of persons belonging to national minorities*, May 2012.

Article 11 of the Framework Convention

Public signs, other topographical indications and personal names

Recommendations from the two previous cycles of monitoring

105. In the previous monitoring cycles, the Advisory Committee encouraged the authorities to promote awareness amongst municipal officials of the legal requirements laid down in the 2006 Language Law and to ensure that they were implemented in compliance with the principles guaranteed in Article 11 of the Framework Convention and in a manner that reflected the multi-ethnic and multilingual character of Kosovo*. In addition, it called on the authorities to remedy the continued shortcomings relating to the transliteration and misspelling of names and surnames of persons belonging to minority communities, in conformity with the legislation in force.

Present situation

106. The Advisory Committee notes overall insufficient progress in the implementation of Article 9 of the Law on the Use of Languages related to the public display of languages on road-signs and other topographical indications. While some municipalities have made efforts to display at least some signs on municipal buildings in both official languages, such as Gjilan/Gnjilane or Ferizaj/Uroševac, the Advisory Committee observed that most municipalities it visited had only one of the official languages displayed, often in addition to English. In addition, it observed numerous disfigurements of bilingual road signs and was informed that such signs are frequently defaced or destroyed soon after having been installed, which exacerbates fear and intimidation among minority communities. The Advisory Committee is deeply concerned by this situation and reiterates that the public display of minority languages is of particularly symbolic value as it portrays the inclusion of other groups as respected and welcome members of society and thereby plays an important role in promoting a sense of belonging and integration.⁷²

107. In addition, the Advisory Committee regrets that persons belonging to minority communities, in particular of Bosnian and Turkish origin, still report that their names are often misspelled in personal identity documents, and that no comprehensive efforts have been made by authorities to address the situation. Procedures for correcting and changing errors made during registration are reported to be cumbersome and costly, and in addition remain unknown among officials and minority communities alike.

Recommendations

108. The Advisory Committee urges the authorities to take immediate measures to ensure that municipal institutions establish bi- and multilingual public signs in all relevant official languages, in line with national legislation. Any defacement or destruction of signs must be immediately mended, officially condemned, and adequately sanctioned.

109. The Advisory Committee calls again on the authorities to ensure that names of persons belonging to minority communities are systematically recorded and registered in line with relevant legislation.

⁷² Ibid.

Article 12 of the Framework Convention

Intercultural content of curricula and teaching materials

Recommendations from the two previous cycles of monitoring

110. In the previous monitoring cycles, the Advisory Committee urged the authorities to increase their efforts to promote the interaction between pupils from different communities, in particular the Serbian and Albanian communities. It called for a comprehensive strategy to be designed in consultation with all relevant communities to remove barriers between the different groups, while underlining the relevance of bilingual education models. It considered that objective and balanced curricula and history textbooks should be developed in consultation with community representatives. It further underlined that teaching staff should receive training adapted to the goals of multicultural and intercultural education.

Present situation

111. The Advisory Committee regrets the continued presence of two parallel education systems. Based on the Constitution and the Comprehensive Proposal for the Status Settlement, members of minority communities have the right to receive public education in one of the official languages of their choice.⁷³ As the Ministry of Education, Science and Technology (MEST) still has no Serbian-language curriculum or textbooks available for use, public primary and secondary schools teaching in the Serbian language continue to make use of the curriculum and textbooks produced by the Ministry of Education of the Republic of Serbia. Curricula are entirely separate and pupils have very limited contact with children attending schools following the Kosovo* curriculum, even in municipalities where the two systems are using the same school premises.⁷⁴ The Advisory Committee is deeply concerned by this continued policy of separation, which prevents the development of tolerance and interaction among young people and has resulted in a generation growing up learning and using only one of the two official languages of Kosovo*.

112. The MEST has engaged in a comprehensive reform process in order to modernise its Curriculum Framework and education methodology towards skills-based learning, which has an impact also on language learning (see below comments on Article 14). According to information received by the Advisory Committee, it has, in addition, completed its design of a revised Curriculum Framework and is currently involved in the drafting of individual subject curricula, paying attention to the views of minority communities and involving representatives in the discussion of especially sensitive topics. The Advisory Committee regrets, however, that the necessity of introducing bilingual and multilingual teaching methodologies to make Kosovo* viable as a diverse society continues to be insufficiently appreciated. The continued practice of separating children according to their language with no systematic effort of promoting interaction and communication exacerbates the language divide experienced today and risks becoming irreversible if not addressed urgently.⁷⁵

113. The Advisory Committee further notes with concern that a large number of teaching materials and textbooks in use still contain elements of nationalism and convey stereotypes or

⁷³ See *Comprehensive Proposal for the Kosovo Status Settlement*, Annex II, Article 3 (b) and (c) and Article 59 of the Constitution.

⁷⁴ See for a comprehensive analysis, OSCE Mission, Third Community Rights Assessment, July 2012.

⁷⁵ The Advisory Committee was informed that initiatives organised by civil society to bring youth of different ethnic groups together to promote inter-ethnic dialogue have to resort to English as common language as most young people speak only one of the official languages.

prejudices that are harmful towards other communities, with too little attention paid to civic education and respect for diversity. Serbian language textbooks, for instance, refer to Illyrians as “robbers” or to Albanians as “looters”, describing history in terms that are not conducive to promoting harmony between the people of Kosovo*.⁷⁶ Textbooks used on the basis of the Kosovo* curriculum are not always in line with the Constitution and do not sufficiently pay attention to the specific cultures and identities of the different, particularly numerically smaller, groups, as community representatives are not sufficiently involved in their development. Persons belonging to the Roma, Egyptian and Ashkali communities report that there have been no efforts to adequately portray their respective specificities in relevant textbooks, despite repeated requests. In addition, the overall number of materials available is still insufficient, despite efforts to produce textbooks for use in Bosnian and Turkish language schools.⁷⁷ Reportedly only 10% of students in Turkish-language secondary schools have appropriate textbooks, for instance. In addition, the number of teachers able to teach in community languages remains insufficient. Representatives of minority communities report that teachers at minority language schools have often not been adequately trained to teach subjects such as mathematics or biology in non-official languages.

114. The Advisory Committee further notes that efforts have been made to review history teaching in schools and provide teachers and curriculum developers with methodology to introduce critical thinking based on the appreciation of multiple perspectives and modern pedagogical approaches.⁷⁸ The Advisory Committee reiterates the importance of such efforts to promote understanding and mutual respect among youth, which is essential to break the ethnic divide that characterises society today. In addition, there have been some training initiatives to build capacity among primary and secondary school teachers to promote intercultural tolerance and dialogue. The Advisory Committee considers that these efforts should be expanded and attention paid also to the organisation of extracurricular activities that promote inter-ethnic contacts and friendship. It welcomes in this context the development of a civic and intercultural education textbook with the support of the OSCE High Commissioner on National Minorities, which is to be used as of 2013.

Recommendations

115. The Advisory Committee urges the authorities to prioritise the development of a common Curriculum Framework that offers quality education in each of the recognised languages of instruction to members of all communities. All relevant textbooks must be developed in close consultation with community representatives to ensure that they do not contain stereotypes or other harmful images of minority communities and promote intercultural understanding and respect in line with international standards.

116. The Advisory Committee further urges the authorities to take all necessary measures to introduce bi- and multilingual education methodologies to offer young people the opportunity to learn both official and other relevant languages in an integrated environment that reflects appreciation and respect for diversity.

⁷⁶ See *Report of the Independent Commission for the Review of Serbian Language Teaching Materials*, Pristina June 2010. Only very few of the recommendations contained in the report seem to have been implemented.

⁷⁷ See also Annual Report of the Ombudsperson Institution 2011, referring to inadequate substitution of education material through imports.

⁷⁸ See further information on the CoE/EU Joint Programme *Interculturalism and the Bologna Process* at <http://ibp-kosovo.org/?cid=2,17>.

117. The Advisory Committee also calls on the authorities to intensify their efforts to ensure that a sufficient number of suitably trained teachers are available to teach in relevant minority languages as well as in line with integrated and multicultural teaching methodologies. In addition, targeted measures must be taken in close consultation with community representatives to provide schools offering education in the languages of minority communities with teaching materials and textbooks in the adequate quantity and quality.

Equal access to education

Recommendations from the two previous cycles of monitoring

118. In the previous monitoring cycles, the Advisory Committee called on the authorities to take resolute steps to facilitate the access to education at all levels of pupils belonging to the Roma, Ashkali and Egyptian communities, and to allocate sufficient financial and other resources for the implementation of strategies developed in this field, particularly as regards the continued low enrolment and high drop-out rates. It further recommended that specific training be provided to teachers of pupils belonging to the Ashkali, Roma and Egyptian communities, and that efforts be made to ensure the integration of children of forced and voluntary returnees into the educational system. The Advisory Committee also called on the authorities to provide equal access to quality higher education for all, including persons belonging to minority communities, and take measures to tackle the brain-drain of young people among minority communities.

Present situation

119. The overall situation regarding access to education for members of the Roma, Ashkali and Egyptian communities remains of concern to the Advisory Committee, despite determined efforts made by non-governmental organisations, the MEST as well as some municipalities. The communities still experience high drop-out rates and generally late and low school enrolment, particularly among girls. The recently adopted Law on Pre-University Education affirms obligatory school attendance and underlines the role of parents in supervising this.⁷⁹ Visits of educators and teachers to families and neighbourhoods inhabited by Roma, Ashkali and Egyptian communities are foreseen in the Strategy and Action Plan for their integration and should be intensified. Where efforts have been made, in particular with the support of school mediators who help establish trust and awareness among parents of the importance of schooling, good results have been achieved.⁸⁰ The Advisory Committee acknowledges the essential contribution of school mediators in promoting school enrolment and achievement and preventing early drop-out, and considers that their status and role should be institutionalised through the MEST to ensure the sustainability and roll-out of progress made so far.

120. It is of deep concern to the Advisory Committee that segregation of Roma, Ashkali and Egyptian children continues to exist in both school systems.⁸¹ Following the intervention of non-governmental organisations, some schools have closed or merged such classes, which violate not

⁷⁹ See Article 15 of the Law at <http://www.assembly-kosova.org/?cid=2,191,746>.

⁸⁰ In Fushë Kosovë/Kosovo Polje and Ferizaj/Uroševac municipalities, for instance, school attendance among children belonging to the Roma, Ashkali and Egyptian communities has significantly improved following intervention of school mediators and with the support of municipal authorities and international actors.

⁸¹ See Information Bulletin of the ECMI of 21 January 2013 regarding Mustafa Bakija school in Gjakovë/Đakovica where a new segregated class was again formed despite previous complaints and a directive issued by the Major against segregation in education. [http://www.ecmikosovo.org/images/21-01-2012 Information Bulletin - Segregation in Education.pdf](http://www.ecmikosovo.org/images/21-01-2012%20Information%20Bulletin%20-%20Segregation%20in%20Education.pdf).

only international standards but also the Constitution.⁸² However, overall awareness of the effects of this exclusion on children is still limited among institutions as well as many parents. The Advisory Committee was informed that the view that separate classes are more successful in adapting to the particular requirements and learning difficulties of Roma, Ashkali or Egyptian children is still widespread. While agreeing with the need of some children, particularly those of forced returnees with insufficient proficiency in languages of instruction, for catch-up language classes prior to or in addition to enrolment, the Advisory Committee underlines the importance and benefits of inclusive education for all children, academically as well as from an overall integration point of view.⁸³ The Advisory Committee regrets that the MEST has not, thus far, issued a general instruction to all schools to immediately discontinue any form of separate classes for children of Roma, Ashkali and Egyptian origin.

121. The Advisory Committee further notes with deep concern that there are also practical difficulties regarding access to quality education. Children belonging to minority communities but residing in majority-populated areas have experienced obstacles and security concerns during their transport to school.⁸⁴ Physical access to school buildings in Dragash/Dragaš municipality for teachers and pupils following the Serbian curriculum and sharing premises with Kosovo* curriculum schools continues to be denied during Kosovo* school holidays. Problems are also reported concerning the provision of electricity, heating and textbooks in some schools, which has a negative impact on the quality of education offered. It is regrettable that the municipal authorities do not appear to have attempted adequately to mediate between the divided communities and resolve outstanding issues. Gorani students attending Serbian-administered secondary schools in Dragash/Dragaš municipality have also faced problems with the authentication of their diplomas. The Advisory Committee considers this situation to be incompatible with Articles 12 and 4 of the Framework Convention as well as contrary to the best interests of the child, and reminds the authorities of their obligation to offer access to quality education to children belonging to all communities, irrespective of the language they choose to be instructed in.

122. The Advisory Committee further regrets that there appear to be no comprehensive programs to promote adult literacy among Roma, Ashkali and Egyptian communities, despite the fact that Article 1 of the 2012 Law on Adult Education and Training confirms this to be an integral part of education. A significant part of the Roma, Ashkali and Egyptian population missed out on education as a result of being displaced during compulsory school age, with illiteracy among Roma women reported to be particularly high. The Advisory Committee welcomes in this context that access to university for members of minority communities continues to be promoted through a quota system at the University of Prishtinë/Priština but regrets reports of corruption and abuse in the application of the quota. Overall, access to quality higher education and prospects of employment continue to be of concern to many persons belonging to minority communities and play an important role in the choice of education system

⁸² See also the ACFC First Commentary on Education under the Framework Convention for the Protection of National Minorities, March 2006; and the judgments of the European Court of Human Rights in the cases of *D.H. and others v. the Czech Republic*, application no. 57325/00 (2007), *Sampanis and others v. Greece*, application no. 32526/05 (2008), and *Oršuš and others v. Croatia*, application no. 15766/03 (2010), as well as OSCE High Commissioner on National Minorities, Ljubljana Guidelines on Integration of Diverse Societies (2012).

⁸³ See, among others, *From Segregation to Inclusion: Roma Pupils in the United Kingdom, a Pilot Research Project*, November 2011, <http://equality.uk.com/Education.html>.

⁸⁴ The majority of children from the IDP camps in northern Kosovo* who were resettled to the Roma Mahalla in south Mitrovicë/Mitrovica, for instance, continue to attend schools in the north. Difficulties are also encountered by members of the Albanian community residing in Serbian-administered municipalities who attend secondary school in south Mitrovicë/Mitrovica.

by parents, often taking precedent over language considerations. The established language division therefore continues to promote a brain-drain of young, qualified people.

Recommendations

123. The Advisory Committee urges the authorities to intensify their efforts to promote the enrolment and attainment of Roma, Ashkali and Egyptian children, and particularly girls, in school. Local achievements in this regard must be supported through enhanced central coordination and direction, such as related to institutionalisation of school mediators. Any form of segregation must be discontinued immediately.

124. The Advisory Committee further urges the authorities to increase their efforts to ensure that all children, irrespective of the language of instruction they choose, have equal and unhindered access to quality education throughout Kosovo*, including higher education.

125. The disadvantages resulting from illiteracy, especially among Roma women, must be addressed through specific literacy and vocational training as part of the general education system.

Article 14 of the Framework Convention

Instruction in and of minority languages

Recommendations from the two previous cycles of monitoring

126. In the previous monitoring cycles, the Advisory Committee called on the authorities to provide minority language schools with adequate supplies of textbooks and suitably trained teachers, and recommended flexibility in accommodating the educational needs of the Gorani community. It further considered that the authorities should increase opportunities for pupils belonging to minority communities to learn the official languages, as well as for pupils belonging to the majority community to learn the other official and minority languages.

Present situation

127. The Law on Education in the Municipalities transfers important competencies related to language instruction to the municipalities. Article 12 enables them to create conditions for providing education services in the Serbian language, including – upon notification of the MEST – by using the curriculum developed by the Republic of Serbia. The Advisory Committee notes that, in the absence of Serbian or Romani language instruction within the Kosovo* Curriculum,⁸⁵ children belonging to the Serbian community as well as a high number of children belonging to the Roma communities continue to attend Serbian-administered schools in order to have access to instruction in their mother tongue (see above comments on Article 12). The decentralisation of education competencies and recent reforms also provide municipalities and schools with the competency to introduce other languages as of third grade. While welcoming the facilitation of language learning at an early stage and in line with modern methodology, the Advisory Committee strongly regrets that the choice of language to be introduced is reportedly made by schools rather than in accordance with parental demand, and that there appears to be no effort to prioritise the learning of official languages.

⁸⁵ A curriculum covering Romani and Roma culture and history has been adopted for grades 2-9 but has not yet been implemented, apart from three pilot schools (see comments below).

128. Regarding the learning of official languages, the Advisory Committee was informed that students belonging to minority communities who follow instruction in Bosnian or Turkish languages still have only two weekly classes of Albanian, often without adequate textbooks. It welcomes in this regard efforts by international actors to support the development of a textbook for teaching Albanian as a second language. While a few Serbian-administered schools reportedly offer Albanian language classes, no initiatives have been taken by schools following the curriculum to introduce Serbian language classes.⁸⁶ Many schools reportedly offer foreign languages such as Spanish or French (in addition to English which is supposed to be taught as of first grade) instead of classes in the other official language. The Advisory Committee considers it essential that all students learn at least some level of the other official language, in line with Article 14.3 of the Framework Convention, to promote the development of an integrated society as well as access to the labour market for young people throughout Kosovo*.

129. In addition, the Advisory Committee remains concerned with the quality of minority language instruction. According to minority representatives, no efforts are made within the MEST to oversee the quality and standards of instruction at Bosnian or Turkish language schools. Many community representatives worry about the quality of education offered and the chances of subsequent employment for students graduating from these schools. It is alarming that numerically smaller communities appear to be taken hostage by an education system that divides its attention between two major language groups but fails to adequately care for the language learning needs of other communities (see also above comments on Article 12). As regards Romani, the introduction of two optional weekly classes has been piloted at three schools in Prizren since October 2011. According to community representatives, institutional support for these classes is weak, no textbooks have been provided, and the responsibility for organising the classes, including the transport of the children to class and the maintenance of contacts with their parents, lies entirely with the teacher – who, at the time of writing the Opinion, had not yet been paid. A significant number of the originally 41 children attending the classes has been missing class and dropping out, as no incentives are provided by the school for attending mother tongue education. The Advisory Committee reminds the authorities of the essential role played by mother tongue education for subsequent language learning and overall academic achievement of children and expects that the challenges identified during the pilot project in Prizren will be appropriately addressed by relevant municipal and central authorities.

Recommendation

130. The Advisory Committee calls on the authorities to intensify their efforts to implement constitutional and legislative guarantees of instruction in minority community languages. Efforts must be made, in close consultation with community representatives, to ensure regular monitoring of quality and standards at minority language schools.

131. The Advisory Committee further calls on the authorities to provide effective opportunities to all students, including those following instruction in minority languages, to learn both official languages.

⁸⁶ See OSCE Mission, Third Community Rights Assessment, July 2012.

Article 15 of the Framework Convention

Participation in elected bodies and administration

Recommendations from the two previous cycles of monitoring

132. In the previous monitoring cycles, the Advisory Committee called on the authorities to promote the representation of persons belonging to minority communities in public administration and the judiciary with a view to establishing a multi-ethnic public service. Increased attention was to be paid to the effective recruitment and retention of persons belonging to minority communities, including at senior levels, as well as to the collection of reliable data on minority representation in line with personal data protection standards, to facilitate the adoption of appropriate measures. In the context of the decentralisation process, it considered that adequate resources needed to be provided to the municipalities to enable them to carry out their competences effectively.

Present situation

133. The Advisory Committee notes discussions regarding possible constitutional amendments to reflect the official recognition of the Croat and Montenegrin communities by providing them with reserved seats in the Assembly, on the same basis as other recognised communities. It is concerned, however, that these considerations have led to anxiety among other minority communities, as they fear that two seats may be taken from the contingent of 20 seats that are reserved for communities, and reassigned to the newly recognised communities.⁸⁷ The Advisory Committee welcomes the inclusion of the Croat and Montenegrin communities in the scope of application of the Law on Communities (see above comments on Article 3) and considers that these communities have an equal right to obtain guaranteed representation in the Assembly as other communities. The Advisory Committee expects that reserved seats if granted will be assigned without infringing on established rights of other communities. The protection of the guaranteed seats is particularly relevant given the on-going electoral reform process that is likely going to introduce multiple electoral districts. The Advisory Committee underlines that any draft amendment to the Constitution or the Law on General Elections must be the subject of close consultation with representatives of all communities and must duly take account of the commitment to promote the effective participation of minority communities in public life, in line with Article 15 of the Framework Convention.

134. The Advisory Committee further notes that the Committee on Rights and Interests of Communities continues to be part of the Assembly. It regrets reports, however, that the recommendations and concerns of the Committee are not adequately considered and that it does not, therefore, have an effective input on legislative drafts that affect the rights and concerns of minority communities. In addition, the Advisory Committee notes that a number of administrative positions are reserved for members of minority communities. The position of deputy mayor for communities was established in a number of municipalities and some central cabinet positions of Minister or Deputy Minister also appear to be reserved for minority communities. The Advisory Committee acknowledges the appreciation among minority

⁸⁷ Article 64(2) of the Constitution provides for “twenty (20) of the one hundred twenty (120) seats to be guaranteed for representation of communities that are not in the majority in Kosovo. The number of seats is divided among the minority communities as follows: the Kosovo Serb community (10); the Roma community (1); the Ashkali community (1); the Egyptian community (1); and 1 additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community (3); the Turkish community (2); the Gorani community (1), if the number of seats won by each community is less than the number guaranteed”. Until the general elections of 2010, due to transitional provisions any vote won by a community party went to an *additional* seat in the Assembly, resulting in the current number of 25 seats for the Serb minority.

communities for these positions and notes frequent reports that it is indeed a community member within the municipality or Ministry that is most likely able to address a concern and promote a solution for the community. It is concerned, however, by the extent to which political considerations appear to play a role in the filling of these positions. Effective participation is best promoted through institutional prioritisation of minority concerns and interests and close consultation with the community based on trust. The appointment of political affiliates has little long-term benefit for the effective representation of the community, as they have often become detached from their communities and do not necessarily represent their interests, even if they share the same ethnic background. In addition, the Advisory Committee regrets that representatives of numerically small communities rarely appear to be appointed to executive positions. This strengthens the impression that these are appointments based on broader political considerations rather than efforts to improve the representation of minority interests in decision-making.

135. The Advisory Committee further regrets that the overall representation of minority communities in the civil service and public structures appears to be still insufficient. During its visit, the Advisory Committee heard repeatedly that the employment of Roma, Ashkali or Egyptian community members was particularly difficult, including at municipal level, due to lack of qualified candidates. While acknowledging the specific disadvantages faced by these communities due to their social exclusion and often extreme poverty, the Advisory Committee was encouraged to personally meet a significant number of highly skilled individuals belonging to the Roma, Ashkali and Egyptian communities. Despite their professional experience and remarkable ability to speak, among others, both official languages, they reported that they were often not even considered for positions in public structures because of their ethnic background. Other communities also report difficulties with regard to public employment, particularly for women and particularly at senior level. The Advisory Committee regrets that no special efforts seem to be made to reach out to minority communities to ensure that qualified individuals are recruited, retained and promoted within public service. This has an obvious impact also on the capacities within public structures, including the judiciary, to respond to the language needs of minority communities in line with relevant legislation (see above comments on Article 10). Efforts must be made to ensure that information on available positions is duly addressed to speakers of both languages. In addition, language proficiency must be considered an advantage in recruitment proceedings and incentives created for persons belonging to minority communities to work in public structures.

136. The Advisory Committee further notes that the authorities engaged in 2008 in a comprehensive decentralisation process, in line with Ahtisaari's Comprehensive Proposal and the Constitution, as a result of which five new municipalities with a majority Serb population were established.⁸⁸ Overall, the process is considered to constitute a successful measure to bring services closer to beneficiaries and improve the effective participation of minority communities in public life.⁸⁹ There is criticism from some minority representatives, however, noting that important competences still remain at central level, such as related to waste disposal and spatial planning, which prevents appropriate and timely decision-making at municipal level and results in a lack of legal certainty for citizens. In addition, most interlocutors agree that comprehensive training of municipal officials is still necessary to ensure that their new functions are properly

⁸⁸ During 2009 and 2010 the municipalities of Gračanica/Gračanice, Klokot-Vrbovac/Klllokot-Vërboc, Parteš/Partesh, Ranilug/Ranillug were established through municipal elections and Novo Brdo/Novobërdë municipality was enlarged to transform it into a municipality with majority Serb population.

⁸⁹ The Advisory Committee is in particular pleased to note reports of increased election participation among the Serb population following decentralisation.

implemented, including as regards local economic development. While the Advisory Committee generally welcomes the transfer of competences to the local level as it can often be a tool to improve the effective participation of minority communities, it considers that attention must be paid to ensure that the decentralisation process enhances co-operation among communities and does not lead to further separation, and that it is governed by efforts to meet the needs and concerns of the affected population rather than by political considerations. It refers in this regard to the European Charter on Local Self-Government for relevant guidance.⁹⁰

Recommendations

137. The Advisory Committee calls on the authorities to guarantee the effective representation of minority communities in the Assembly through the allocation of an adequate number of reserved seats, to be confirmed in the electoral reform process.

138. The Advisory Committee further invites the authorities to ensure that members of minority communities have the ability to effectively participate in relevant decision-making processes at central and local level. Existing mechanisms should be maintained and applied in the interest of community representation rather than political considerations, paying particular attention to the representation of numerically smaller communities.

139. The Advisory Committee further calls on the authorities to continue their efforts to improve the effective participation of minority communities through decentralisation while paying due attention to the concerns and needs of the affected population, in line with relevant European standards.

Consultation with minority communities and coordination

Recommendations from the two previous cycles of monitoring

140. In the previous monitoring cycles, the Advisory Committee called for all measures pertaining to minority protection to be properly coordinated among competent authorities and closely consulted with the Community Consultative Council. In addition, it encouraged the authorities to periodically review the Community Consultative Council's appointment procedures to ensure that it was as inclusive as possible, also with regard to the representation of women belonging to minorities, and underlined that the Council should be provided with adequate resources to function effectively and that awareness should be raised among minority communities about its mandate and working methods. It further pointed out that efforts were required to render more effective the participation of minority communities in decision-making, especially on issues affecting them.

Present situation

141. The Advisory Committee is pleased to note that the role and efficacy of the Consultative Council for Communities under the President have been strengthened following amendments to its Statute in 2012. All minority community organisations can now apply to be accredited with the Office of the President and can then nominate their representative members of the Council. A gender quota has been set to ensure that at least 40% of the members are female.⁹¹ Importantly, the Statute now stipulates that there should be at least 14 meetings per year, and the

⁹⁰ This applies, for instance, to the still outstanding establishment of a new municipality of north Mitrovica/Mitrovicë. The Advisory Committee notes with concern that the population is experiencing high levels of uncertainty with regard to its future status and administration.

⁹¹ In early 2013, there were 25 members of which only six were women.

Council has been equipped with a secretariat and some staff.⁹² The mandate of the Council remains, however, limited to raising issues of concern. While the government, following changes to its Rules of Procedures in 2011, *must* regularly consult the Council on decisions concerning minority communities, the Council has not gained any active role in decision-making processes. Members have expressed their concern that they are treated as members of civil society rather than as an institutional mechanism for promoting consultation with communities, and that they are not really involved in any of the important issues concerning them, such as decentralisation and privatisation processes or questions related to the status and regional negotiations.⁹³ In their opinion, the Council would be better placed in the Prime Minister's office.

142. Given the perception that the Council does not enjoy a lot of influence among decision-makers, most members belonging to national minorities address directly representatives of their community in public structures to resolve issues concerning them. This places persons belonging to the Roma, Ashkali or Egyptian communities at a noticeable disadvantage since they have only limited numbers of representatives within civil service, particularly at higher level, to turn to. In addition, the Advisory Committee regrets reports that even regarding the implementation of the Strategy and Action Plan on the Integration of Roma, Ashkali and Egyptians, which stipulates close consultation with community representatives, no comprehensive efforts have been made to engage in regular consultations with the communities at local and central level, including as regards important aspects such as the allocation of funding or the prioritisation of beneficiaries. While positive examples exist in some municipalities where officials have sought input from and dialogue with communities, the Advisory Committee remains concerned by the lack of guidance from central level regarding the importance of regular consultation, and the apparent reliance on informal and personal connections rather than institutionalised channels.

143. The Advisory Committee further notes that an overall lack of central coordination further reduces the effectiveness of consultation, even when efforts are made at local level to involve minority communities in decision-making on issues that affect them. While some MOCRs, for instance, are reported to have engaged in regular contacts with minority communities and made efforts to take their views and concerns into account in all relevant decision-making, other entities at central and local level with overlapping mandates may be developing different strategic approaches based on consultations with other actors. The overlap of responsibilities without clear instructions or understanding of the mandate of other entities overall hinders the effective implementation of activities intended for the benefit of minority communities. The Advisory Committee considers that central level institutions must significantly intensify their coordination to ensure that municipal actors are duly instructed and informed of their respective responsibilities and coherent strategies can be developed (see also above comments on Article 4). It is also essential that adequate data on the situation and concerns of minority communities is collected and processed centrally and in close consultation with the communities concerned, to ensure that their views and concerns are effectively taken into account by all relevant units. Efforts must also be made to promote the effective participation of minority communities in the monitoring and evaluation of all relevant programmes or strategies to optimise their efficacy.

⁹² See ECMI *The Amendment of the Statute of the Consultative Council for Communities* http://www.ecmikosovo.org/images/pdf/Bulletins/The_Amendment_Statute_CCC.pdf.

⁹³ The Advisory Committee regrets in this context that few efforts were reportedly made to involve the Council in the preparation and organisation of the census 2011, despite its obvious relevance for minority communities.

Recommendations

144. The Advisory Committee urges the authorities to strengthen the mandate and role of the Consultative Council for Communities and to ensure that it is effectively consulted on all issues of relevance to minority communities, and granted the opportunity to influence decision-making processes on issues that affect them.

145. The Advisory Committee further calls on the authorities to establish effective and institutionalised consultation mechanisms at local level to ensure that the views and concerns of communities are regularly discussed and adequately taken into account. In addition, central-level coordination must be intensified and information effectively shared, in consultation with minority communities, to promote comprehensive strategic direction in all activities related to communities at municipal level.

Participation in socio-economic life*Recommendations from the two previous cycles of monitoring*

146. In the previous monitoring cycles, the Advisory Committee urged the authorities to intensify their efforts to promote access to the labour market by persons belonging to minority communities through targeted measures, while paying particular attention to persons belonging to marginalised communities, as well as to young persons and women with a minority background. It further called on the authorities to ensure equal access to economic opportunities for persons belonging to minority communities also within privatisation processes.

Present situation

147. In an overall unfavourable environment with regard to poverty and unemployment,⁹⁴ persons belonging to minority communities are disproportionately affected. While persons belonging to the Serb community have some employment opportunities in the Serbian-administered institutions, there is a high proportion of elderly persons among the Serb community. Roma, Ashkali and Egyptian communities continue to experience social exclusion and discrimination. While efforts have been made to improve the situation with the introduction of small and medium-size grants and the promotion of small businesses through MOCRs in some municipalities, persons belonging to Roma, Ashkali and Egyptian communities contend that the schemes are often not available to them, despite legislative provisions. Targeted schemes should be developed to promote access to employment by members of minority communities, including through positive measures (see above comments on Article 4), and attention must be paid in particular to raise awareness in the newly established municipalities of the applicable legal framework and institutional responsibilities related to small and medium-sized enterprises.

148. The Advisory Committee welcomes a recent initiative of the Office of Community Affairs within the Office of the Prime Minister related to employment of minority communities in civil service and publicly owned enterprises, comprising research and awareness-raising activities as well as the development of an official strategy to address remaining challenges. With regard to the private sector economy, the Advisory Committee notes that it is developing at a much slower pace in areas inhabited by minority communities. As a result, community members are often not suitably informed about employment or business opportunities that arise,

⁹⁴ Approximately 30% of the population were reported in October 2012 to live below the poverty line and 13% in extreme poverty. Based on data provided by UNDP, only some 55% of the workforce is employed, the majority in the informal economy. See also ILO *Profile of the Social Security System in Kosovo*, 2010.

including related to the on-going privatisation process, and do not have the relevant background or experience to participate in tenders or other application procedures. Some efforts have been made, often with international or civil society support, to provide relevant vocational and other training to communities. However, much more comprehensive engagement in this regard is required to ensure that economic development, including through privatisation, is effectively accessible to members of all communities. The Advisory Committee is further concerned by reports that minority communities throughout Kosovo* face security concerns when wishing to utilise their assets for commercial gains, such as by opening a shop or cultivating their land (see above comments on Article 6).

149. The Advisory Committee further notes particular obstacles for members of minority communities with regard to access to health. Linked to the presence of Serbian-administered hospitals offering employment, the number of medical staff of Serb origin in Kosovo* hospitals is reportedly close to nil. As a result and in view of the above-mentioned language divide, persons belonging to minority communities do not have access to Serbian-language speaking medical staff and often travel long distances to ensure that they can be fully understood by medical professionals. The Advisory Committee also heard of difficulties when wishing to fill Serbian language prescriptions in pharmacies. In addition, returnees face complications when wishing to continue medical treatment that was commenced during displacement, as Kosovo* has only a few specialised health centres. Psychological and psychiatric treatment, for instance, is generally considered below standard. While this affects the broader population, it is of particular concern given the traumatising experienced by many persons belonging to minority communities in displacement or upon return.

150. The Advisory Committee is further concerned by limited access by minority communities to other core services, such as utilities and garbage collection for members of minority communities, for example in the desolate social housing complexes in Obiliq/Obilić municipality which, in addition, are exposed to hazardous levels of industrial pollution.

Recommendations

151. The Advisory Committee calls on the authorities to intensify their efforts to promote access of minority communities to socio-economic opportunities, including in the privatisation process. Targeted training opportunities and grants must be offered, in particular in remote locations, to support the most disadvantaged to enter and remain in the labour market.

152. The Advisory Committee further urges the authorities to ensure that persons belonging to minority communities are effectively provided with access to quality health and other core services. Efforts must be enhanced to recruit and retain medical professionals with adequate language proficiency in minority community languages.

Article 16 of the Framework Convention

Protection against population changes

Recommendations from the two previous cycles of monitoring

153. In the previous monitoring cycles, the Advisory Committee considered it essential that all efforts were made to facilitate safe and sustainable returns in line with the individual's choice of residence throughout Kosovo*. In addition, it had to be ensured that no measures, including those related to on-going return and decentralisation processes, were used to change the

proportion of the population in certain areas inhabited by persons belonging to minority communities before the conflict.

Present situation

154. The Advisory Committee notes that sustainable return has not occurred in a number of areas where persons belonging to minority communities resided prior to the conflict and that, apart from external, including security-related, factors that made return impossible, other considerations linked to career opportunities and family relations have dissuaded displaced persons from returning. While the informed choice of an individual that has been displaced for 13 years is paramount and should be accommodated including as regards the desire to integrate locally (see above comments on Article 4), the commitment of the authorities to maintain a multi-ethnic demographic structure throughout Kosovo* demands continued efforts to promote return to the place of residence prior to the conflict, and to make return sustainable through targeted measures. The Advisory Committee is deeply concerned by the impression of some interlocutors that economic development and privatisation efforts favour members of the majority population, even and possibly especially in areas that were formerly inhabited by minority communities, thereby contributing to population changes that are contrary to Article 16 of the Framework Convention.

155. The Advisory Committee further notes continued changes to the demographic structure in north Mitrovica/Mitrovicë, where concerted efforts are being invested by the authorities to establish administrative authority since the creation of 'Mitrovica North Administrative Office' in May 2012. While welcoming efforts to provide services to residents in the north and improve their ability to exercise their rights in accordance with the Constitution,⁹⁵ the Advisory Committee is concerned about reports of increased efforts to provide housing for displaced persons of Albanian origin, amid objections from the population. It considers that all efforts must be made to closely involve representatives of all communities, including numerically smaller ones, in decision-making that affects the demographic make-up of the municipality and underlines that the needs and concerns of all citizens must be given priority over political considerations.⁹⁶

Recommendations

156. The Advisory Committee calls on the authorities to intensify their efforts to facilitate and encourage the sustainable return and integration of displaced persons to their original place of residence.

157. The Advisory Committee further calls on the authorities to take all necessary measures to ensure that on-going decentralisation processes do not result or amplify changes to the population. All relevant decisions, including as regards privatisation efforts, must be taken in close consultation with all communities.

⁹⁵ See information on a visit of the Ombudsperson to the office on 21 January 2013. <http://kk.rks-gov.net/mnao/News/Visit-of-the-Ombudsman-to-MNAO.aspx>.

⁹⁶ The Advisory Committee notes in this context continued controversy related to the possible privatisation of Trepça/Trepča Mine which continues to hold valuable reserves as well as substantial employment opportunities and, given the direct link between economic opportunity and demographic developments, could have a direct effect on the demographic structure in the region.

Articles 17 and 18**Regional co-operation***Present situation*

158. The Advisory Committee welcomes the on-going European Union-mediated dialogue between Pristina and Belgrade that has resulted in significant progress on long-standing issues, such as the integrated management of crossing points implemented as of December 2012, and constitutes an important opportunity to resolve outstanding difficulties in a number of other spheres of concern to minority communities and to the enjoyment of rights contained in the Framework Convention, including with regard to return.

Recommendation

159. The Advisory Committee encourages the authorities to pursue their efforts with respect to regional co-operation and dialogue in order to promote the implementation of rights contained in the Framework Convention throughout Kosovo*, including with regard to return.

III. CONCLUSIONS

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

Positive developments following two cycles of monitoring

161. The general legislative framework pertaining to minority protection remains favourable and exceeds international standards in some aspects. The Croat and Montenegrin communities were officially recognised as minority communities through amendment of the relevant legislation in December 2011. The Ombudsperson Institution continues to actively and independently exercise its important functions and receives an increasing number of applications. A comprehensive population census was conducted in April 2011 and provides a range of valuable and detailed information on the population in 34 out of 38 municipalities.

162. Return is on-going in a number of sites and progress has been made in some municipalities to promote dialogue between receiving and returning communities with positive results, even in some formerly difficult return areas. The coordination of return efforts has been improved through the establishment of separate municipal units, tasked to facilitate the coordination of return assistance. The Judicial Institute is continuing to train judges and other legal professionals amid a broader judicial reform process. The Property Agency has completed a high number of its pending cases through mass processing and enforcement of decisions is on-going with the support of the police. Osterode Camp was closed at the end of 2012 and all remaining residents have been resettled. Comprehensive and ambitious policy documents for the integration of the Roma, Ashkali and Egyptian communities have been adopted and implementation is on-going with some positive results at local level. An inter-ministerial working group on reconciliation and dealing with the past has been established.

163. The events of early 2013 aside, substantial progress has been made related to the preservation and protection of cultural and religious sites. Works have been completed at over half of the 34 identified sites damaged in March 2004, with major architectural works outstanding at four locations. The Ministry of Culture, Youth and Sports has pledged resources for the completion of all outstanding works. An Implementation and Monitoring Council has been established to monitor and facilitate the implementation of relevant provisions relating to the protection of Serbian Orthodox religious and cultural heritage. At the majority of special protected zones security is provided by the KPS. The police have considerably improved their performance and are increasingly regarded as trustworthy, including among minority communities. Targeted patrols and the appointment of community liaison officers, among others, have contributed to improved security in some areas and a comprehensive community policing strategy was adopted in 2012.

164. Amid favourable legislative provisions, a wide array of minority language broadcast and print media continue to exist, including in the languages of numerically smaller communities. A second public channel in Serbian and devoted entirely to minority communities is expected to be functional in 2013. A fund for support to minority media has been constituted and is disbursing grants to selected beneficiaries. The Language Commission underwent reform to render it more effective and has been replaced by the Office of the Language Commissioner, who was appointed at the end of 2012 with the mandate to oversee and promote implementation of the language legislation, and to establish an effective complaints mechanism. Official language

training for civil servants has begun in some municipalities and is expected to be expanded. A comprehensive education reform process places more emphasis on language learning, among others, through the introduction of modern teaching methodology. Efforts are on-going, with international support, to review history teaching and develop quality textbooks aimed at the promotion of intercultural understanding. Steps are also taken to improve school enrolment and attainment by Roma, Ashkali and Egyptian children and progress is made at local level through close consultation with all relevant stakeholders and the involvement of school mediators.

165. The effective participation and representation of minority communities in public life continues to be supported through reserved seats in the Assembly and the appointment of representatives into executive positions at central and local level. In addition, the Consultative Council for Communities was strengthened following an amendment to its Statute in 2012 which, among others, establishes a more inclusive composition. The Council has been provided with an office and some staff and meets more regularly than before. The decentralisation process is on-going and five new municipalities with majority Serb population have been created, generally increasing community participation at local level. Some capacity building measures are on-going for the new municipal staff, among others, to promote access to business and employment opportunities in the new municipalities.

Issues of concern following two cycles of monitoring

166. Despite his active engagement, resources provided to the Ombudsperson are still insufficient and his recommendations are not consistently implemented by relevant authorities. The applicability of the Anti-Discrimination Law in daily life is hampered by a lack of precision concerning procedures and sanctions, and awareness among the public and relevant officials about the available remedies against the multiple forms of discrimination in society is limited. Municipal authorities are not trained to deal with human rights or discrimination-related complaints and there is no central system to gather available information and data on relevant cases. There is insufficient central coordination, including as regards the implementation of the Action Plan for the integration of the Roma, Ashkali and Egyptian communities. Voluntary return has decreased and remains impossible in a number of return sites due to continued security concerns and a lack of good will on the side of municipal authorities to unequivocally welcome returnees and promote inter-ethnic understanding. In addition, access to employment remains very limited and most returnees rely on social assistance. While trust in the police has improved, the criminal justice sector generally is viewed as biased and unprofessional, as the backlog of pending court cases remains tremendous and no comprehensive solution has been found to a range of complex property related issues.

167. There are no clear mechanisms or objective criteria for the allocation of funding for cultural activities, and support for numerically smaller communities and the preservation and development of their specific cultures is very limited. In the absence of a comprehensive cultural policy aimed at multiculturalism and based on respect for diversity, evidence of minority cultures is gradually disappearing from urban centres. As a result, there has been very little sustainable progress with regard to inter-ethnic relations and nationalist tendencies are increasing, particularly among young people. Growing language barriers exacerbate the situation as newer generations grow up learning only one of the official languages. The few existing initiatives to create platforms for interaction and dialogue between the communities are led by committed individuals or civil society and do not receive consistent support from the authorities. A climate of fear and intimidation continues to directly impact perceptions of security and political freedom among minority communities, and recent waves of violent destruction directed

at graveyards and other religious sites, including sometimes worshippers, restrict the enjoyment of the right to manifest religious beliefs.

168. Public media continue to pay too little attention to the issues of concern to communities and are sometimes engaging in biased and non-objective reporting practices. Overall, the quality and quantity of broadcasting and print media in minority community languages is still insufficient, particularly regarding the numerically smaller groups, which contributes to an overall environment that is not conducive to the use of multiple languages. The implementation of the language legislation remains sporadic due to a lack of resources and sometimes good will of municipal authorities and translations often contain mistakes or ‘Albanisations’. In addition, frequent defacements of bilingual topographical indications and other public signs create an intimidating atmosphere and deter persons belonging to minority communities from attempting to enjoy their linguistic rights. The mandate and remit of the Language Commissioner remains widely unknown and the Office requires a substantial increase in political and financial support to exercise its functions. The lack of proficiency in both official languages among civil servants must be addressed urgently and comprehensively, including through adequate measures in the education sphere.

169. In the absence of an integrated curriculum offering education in all recognised languages of instruction, children continue to attend either Kosovo*- or Serbian-administered schools, following separate curricula with practically no interaction, even when school premises are shared. There is no teaching of the other official language in either system and pupils at the few Bosnian or Turkish language schools run by the Kosovo* authorities continue to have insufficient instruction in Albanian. Despite on-going education reform processes, efforts to introduce bilingual teaching methodologies to establish genuine multilingualism in line with the Constitution and language legislation are inadequate. A large number of textbooks and teaching material used in both systems still contains elements of nationalism and prejudice and efforts to introduce new teaching methods promoting intercultural understanding including as regards history, must be intensified. The quality of education at minority language schools suffers from a lack of adequately trained teachers and appropriate textbooks are often not available. Children belonging to the Gorani community continue to face obstacles in their access to quality education. Levels of school enrolment and attainment among Roma, Ashkali and Egyptian children remains disproportionately low and practices of segregation persist in some schools, despite some efforts by local authorities. In addition, official support for the introduction of Romani language classes in schools is insufficient.

170. Efforts to consult minority community representatives on all issues concerning them remain sporadic and often lack institutional mechanisms at local level. The mandate of the Consultative Council for Communities is still limited to the discussion of concerns without having gained an active role in relevant decision-making processes. Appointments of community representatives to executive positions are often based on political considerations and numerically smaller minorities deem themselves not adequately considered. In addition, more central level guidance and instruction is required to further promote the effective consideration of local community concerns at central level. Lack of effective participation concerns especially Roma, Ashkali and Egyptian communities, prompted among others by their disproportionately low representation in public administration. Access to public services in the languages of minority communities remains difficult in many locations due to insufficient numbers of public officials who are proficient in those languages. Minority communities continue to be disproportionately affected by unemployment and poverty and do not have equal access to available business opportunities, including within the privatisation process.

Recommendations

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

Issues for immediate action⁹⁷

- **Take effective measures for the promotion of inter-ethnic understanding and respect at all levels, including a transparent cultural policy based on the appreciation of diversity and the establishment of an integrated and multilingual education system. Create adequate platforms where members of different groups, in particular young people, can meet and interact;**
- **Condemn unequivocally, promptly and systematically, at central and municipal level, all acts of inter-ethnic hostility. Ensure that police investigations into security incidents affecting communities are promptly and professionally followed up by prosecutorial and judicial services to reinstall trust in the rule of law; take resolute measures at all levels to reassure displaced persons and returnees that their return is welcome;**
- **Take all necessary measures to enhance the implementation of the language legislation at central and municipal level. Support the Language Commissioner in the exercise of his functions through adequate financial and human resources and prioritise the creation of an overall environment that actively encourages multilingualism in the public sphere;**
- **Improve the quality of education in the languages of numerically smaller communities and identify appropriate solutions to the remaining obstacles to access to education for children belonging to the Gorani, Roma, Ashkali and Egyptian communities; review teaching materials and methodology to render them appropriate for a multi-ethnic society;**
- **Provide effective opportunities for persons belonging to all minority communities, including numerically smaller ones, to participate in relevant decision-making processes at central and local level while ensuring that all efforts enhance integration rather than the development of separate structures.**

Further recommendations⁹⁸

- **Provide the Ombudsperson Institution with adequate human and financial resources, including with regard to relevant awareness-raising and training activities, and consistently implement his recommendations at central and local level;**

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

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

- Take all necessary steps to render the Anti-Discrimination Law more applicable and ensure that municipal authorities are suitably trained and instructed to deal with related complaints; establish a comprehensive system in line with relevant data protection standards, to gather disaggregated information on complaints related to discrimination to facilitate the development of targeted measures to promote full and effective equality of persons belonging to minority communities;
- Improve the central coordination of return assistance through targeted supervision and instruction and ensure that municipal officials are suitably trained; pursue efforts to promote sustainable return through targeted grants and other measures aimed at creating employment and business opportunities in remote locations;
- Take active measures to reduce the continued backlog of cases, including related to property, and improve access to justice for minority communities through continued training of judges and the targeted recruitment of legal professionals with minority background; provide all necessary support to the national property rights coordinator;
- Devise a transparent mechanism based on objective criteria and clear application procedures for the allocation of support for cultural activities of all minority communities; pursue efforts to complete the outstanding works required due to the events of March 2004, and provide due security to the cultural and religious sites of all minority communities, including their special protected zones;
- Enhance the presence of minority community languages in public broadcast and print media and ensure that the concerns of communities, including the numerically smaller ones, are adequately and objectively reflected; take resolute measures to enhance the effective participation of representatives of the Roma, Ashkali and Egyptian communities in the coordination and implementation of the Strategy and Action Plan, and to increase their representation in public administration;
- Expand efforts to provide equal access of persons belonging to minority communities to socio-economic rights, such as health services, employment and business opportunities, including within the on-going privatization process.