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

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**COMMENTS OF THE GOVERNMENT OF SERBIA AND  
MONTENEGRO ON THE OPINION OF THE ADVISORY  
COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK  
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES  
IN SERBIA AND MONTENEGRO**  
(received on 29 April 2004)

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## **I. INTRODUCTION**

The Advisory Committee provided for by Article 26, para. 1, of the Framework Convention for the Protection of National Minorities (hereinafter: the Convention) adopted its Opinion on the Implementation of the Convention in Serbia and Montenegro at its 18<sup>th</sup> meeting on 27 November 2003.

Serbia and Montenegro highly appreciates activities of the Advisory Committee within the process of monitoring the implementation of the Convention and welcomes the cooperation it established with the Advisory Committee during the preparation of the Opinion, reflected in the drawing up of a supplementary questionnaire, sent to the authorities of Serbia and Montenegro on 23 June 2003 for the purpose of obtaining more detailed information, as well as in a visit by a delegation of the Advisory Committee, which visited Serbia and Montenegro from 27 September to 3 October 2003 further to an invitation from the authorities.

Serbia and Montenegro considers the fulfillment of the commitments undertaken by accessing the Convention to be a priority of a new minority policy pursued in the country within the process of building a democratic state based on the rule of law. Moreover, Serbia and Montenegro finds that the fulfillment of the commitments arising from the membership of the Convention constitutes a civilizational progress, which ranks the country that has just emerged from an authoritarian political order among the states that, on an equal footing, under the auspices of the Council of Europe, participate in the pan-European process of promoting and protecting the rights of national minorities. Bearing in mind the above, Serbia and Montenegro is genuinely devoted to the honoring of the commitments under the Convention.

The State Report on the implementation of the Convention, which is a basis of the monitoring process, as well as a supplement of the report drawn up on the basis of the questionnaire of the Advisory Committee, were drafted under, and are fully based on, the principle of transparency. Serbia and Montenegro considers that it is of great relevance to the implementation of the Convention that it maintains open and constructive dialogue with bodies responsible for the monitoring of the implementation of the Convention, the Advisory Committee and the Committee of Ministers of the Council of Europe. In that context, Serbia and Montenegro finds that the Opinion of the Advisory Committee is based on an expert analysis of the status of national minorities and devoted to very important problems. Serbia and Montenegro believes that the observation of the Advisory Committee that, prior to the adoption of the State Report, the country partly underwent constitutional reconstruction (only at the federal level – the level of the Union), which at the present stage of transition generates a certain degree of uncertainty regarding the responsibilities of various governmental structures, as well as that it is facing a range of objective difficulties of a primarily economic nature, positively contributes to a truly open and constructive dialogue.

Serbia and Montenegro's comments on the Opinion of the Advisory Committee have been prepared by the Ministry of Human and Minority Rights of Serbia and Montenegro. In the process of drawing up the comments, representatives of the competent ministries from both member States were consulted. Proceeding from the noted observations regarding the cooperation between the competent authorities of the State Union and representatives of the authorities of the Republic of Montenegro, special attention was paid in the drafting of the comments to the participation of representatives of the Republic of Montenegro in this process. The cooperation with the authorities of the Republic of Montenegro was carried out through the Assistant Minister of Human and Minority Rights, who is from Montenegro, and who was a

liaison officer during the process of preparing comments between the Montenegrin authorities and the authorities of the State Union in line with the recommendation of the Advisory Committee.

Bearing in mind that the authorities of Serbia and Montenegro cooperate on a regular basis with non-governmental organizations whose activity is promotion and protection of the rights and national minorities, with organizations that bring together representatives of the national minorities, as well as with the national councils which are protagonists of cultural autonomy of national minorities, Serbia and Montenegro notes attentively that the competent authorities are familiar with a range of remarks and suggestions presented in the Opinion of the Advisory Committee. As a demonstration of their readiness to jointly solve problems, the authorities of Serbia and Montenegro forwarded the Opinion of the Advisory Committee, together with a draft of the present Comments, to the mentioned organizations. Finding that the implementation of the Framework Convention is a process, the authorities of Serbia and Montenegro will publish the Opinion of the Advisory Committee together with the present Comments.

Considering the positive nature of the Opinion of the Advisory Committee, Serbia and Montenegro hereby makes the following comments:

## **II. COMMENTS ON *CONCLUDING REMARKS* OF THE ADVISORY COMMITTEE SET OUT IN SECTION V. OF THE OPINION OF THE ADVISORY COMMITTEE (SECTIONS 171. - 177.)**

In order to avoid unnecessary repetition related to certain positions set forth in *Concluding Remarks* of the Advisory Committee we hereby refer to the relevant comments presented in sections IV. and V. of our Comments, and in particular:

In respect of section 173: to a reply to sections 120 and 121.

In respect of section 174: to a reply to sections 120 and 121.

In respect of section 175: to a reply to sections 136, 137 and 141

In respect of section 176: to a reply to sections 125,129, 130, 132, 154

In respect of section 177: to a reply to sections 134, 147, 149, 150 and 159

## **III. REPLIES TO *MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE* (SECTIONS 119. – 170.)**

### **REPLY TO THE GENERAL REMARKS**

#### **Section 120**

The Advisory Committee *finds* that there is uncertainty as to the allocation of responsibilities between various governmental structures and *considers* it important that new initiatives are implemented to increase the level of contacts and co-operation between the authorities in the field of the protection of national minorities.

The authorities of Serbia and Montenegro point to the fact that since the submission of the State Report the country has undergone partial constitutional reconstruction (at the federal level – the level of the State Union), which at the present stage of transition generates a certain degree of uncertainty with respect to the responsibilities of various governmental structures. Through the adoption of the Constitutional Charter and the Charter of Human Rights and Minority Rights and Civil Freedoms, which represent the main constitutional documents of the State Union Serbia and Montenegro, a respectable legal framework has been created for the protection and promotion of the status of national minorities. The Charter of Human Rights and Minority Rights and Civil Freedoms guarantees a wide spectrum of minority rights while the Constitutional Charter provides that the member States shall regulate human and minority rights in the fields falling in their competences. The Ministry of Human and Minority Rights of the State Union is responsible for monitoring the exercise of human and minority rights and for coordinating, in association with the competent authorities of the member States, the work on the implementation of, and respect for, international conventions on the protection of human and minority rights. The coordination of the work on the implementation of and respect for international conventions on the protection of human and minority rights with representatives of the authorities of the Republic of Montenegro was effected through the Assistant Minister of Human and Minority Rights, who comes from the Republic of Montenegro. The Ministry of Human and Minority Rights of the State Union Serbia and Montenegro has opened a separate office in Podgorica which will liaison the Ministry with the competent ministries in the Republic of Montenegro on a permanent basis.

**Section 121.**

**Advisory Committee *finds* that uncertainty and flux also characterises the status of relevant legislation and *considers* it instrumental that in the on-going reforms, the achieved level of human and minority rights will not be reduced and that new legislation in this field is endorsed as widely as possible.**

The uncertainty of the status of the legislation relevant to the situation of national minorities is of a temporary nature and a consequence of the fact that the country has seen constitutional reconstruction. The legislation relevant to the status of national minorities was adopted before the passage of the Constitutional Charter of the State Union and before the passage of the Charter of Human Rights and Minority Rights and Civil Freedoms. The Constitutional Law on the Implementation of the Constitutional Charter in its Article 20 stipulates that within one year from the effective date of the Constitutional Charter federal laws and other federal regulations falling in the competence of the State Union shall be harmonized with it, while the laws of the member States shall be harmonized with the Constitutional Charter by 31 December 2003. The Constitutional Law for the Implementation of the Constitutional Charter sets forth that the Assembly of Serbia and Montenegro shall set up a separate commission for the purpose of ensuring the harmonization of the regulations with the Constitutional Charter. Upon the constitution of the Assembly of Serbia and Montenegro, the Commission was set up. At the time of the drafting of these comments the Commission has not yet proposed a program for the harmonization of the regulations. Certain delays in the work of the Commission are a consequence of an early election in the Republic of Serbia and a time consuming process of forming a new government of the Republic of Serbia. The Commission is expected to propose a program for the harmonization of regulations with the Constitutional Charter soon.

The authorities of Serbia and Montenegro point to the fact that the Constitutional Charter of the State Union in its Article 9, para. 2, and the Charter of Human Rights and Minority Rights and Civil Freedoms in its Article 57, specifically provide that the achieved level of human and

minority rights, individual and collective, may not be reduced, which is of particular significance for future reforms and new legal arrangements related to minority rights. To that effect, the authorities of Serbia and Montenegro point to the fact that new draft regulations on minority rights in the Republic of Montenegro comply with the above mentioned provisions of the Constitutional Charter and the Charter of Human Rights and Minority Rights, which has been confirmed also in the Comments of the European Commission for Democracy through Law on the Draft Law on the Exercise of the Rights of National Minorities in the Republic of Montenegro No. 270/2003 of 9 March 2004.

### **Reply to Article 3.**

#### **Section 122.**

**The Advisory Committee finds that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and considers that the authorities should examine this issue in consultation with those concerned.**

The Framework Convention does not contain a definition of the term national minority. Bearing that in mind, the State Union Serbia and Montenegro has defined a national minority in the Law on the Protection of Rights and Freedoms of National Minorities as any group of citizens which is, in terms of its number, sufficiently representative despite the fact that it constitutes a minority in the territory of the state, having a long-lasting and firm bond with the territory of the state and possessing features such as language, culture, national or ethnic affiliation, origin or religion, in which it differs from the majority population and whose members are characterized by the concern for jointly preserving their common identity. Proceeding from the above legal definition, it is clear that in Serbia and Montenegro those groups are national minorities which meet the following criteria:

members of the group are citizens of Serbia and Montenegro the group is different from the majority population by its language, culture, ethnicity, background or religion members of the group jointly preserve their common identity the group has been historically present in the territory of Serbia and Montenegro

The above definition of a national minority does not allow including in that term immigrants and persons who do not possess the citizenship of Serbia and Montenegro. By providing a legal definition of the term national minority as laid down in Article 2 of the Law on the Protection of Rights and Freedoms of National Minorities, the authorities of Serbia and Montenegro sought to introduce in its legal order a definition which is accepted by a large number of international public law theoreticians, and which is in line with comparative experiences and builds upon two important instruments adopted under the auspices of the Council of Europe. Serbia and Montenegro recalls that citizenship is indicated as a criterion of protection in CoE Parliamentary Assembly Recommendation No. 1201, i.e. in the Draft Additional Protocol to the Convention on the Protection of Human Rights and indicates that, by enacting the Law on the Protection of Rights and Freedoms of National Minorities, it took into account also the preparations for the ratification of the European Charter for Regional or Minority Languages which prescribes in its Article 1.1. that term “regional or minority languages” does not include languages of migrants.

The scope of the Framework Convention is the protection of national minorities. The Framework Convention, as construed by the authorities of Serbia and Montenegro, is not a general instrument of the protection of human rights which would protect the rights of all the

groups which are different from the majority population on the basis of any criterion. Members of those groups are protected in Serbia and Montenegro because they enjoy universal human rights enshrined also in a large number of international instruments ratified by Serbia and Montenegro, that being noted in the Opinion of the Advisory Committee as well.

The authorities of Serbia and Montenegro are of the opinion that the article-by-article approach to the implementation of the Framework Convention would not be suitable to the nature and purpose of the Framework Convention because it would create two categories among the beneficiaries – minorities whose members enjoy all the rights enunciated in the Convention, and minorities to whose members only certain rights set out in the Convention are recognized.

### **Section 123.**

**The Advisory Committee *finds* that there have been debates in Serbia and Montenegro on the inter-relation between different identities that have certain similarities and *considers* that the authorities should continue their efforts to exclude all attempts to impose a specific identity on the persons concerned.**

The authorities of Serbia and Montenegro approach with great care any issue related to the national identity and recognize all national identities on an equal footing. Certain rights that persons belonging to national minorities enjoy individually or together with other members of their national community, in Serbia and Montenegro's legal order are enjoyed in a statutorily defined manner, which is often numerically determined.

The authorities of Serbia and Montenegro follow with special attention debates regarding inter-relation between the Romanian and Vlach minorities, between the Croatian and Bunyevtsi minorities, between the Bosniac and Muslim minorities, as well as issues related to the special identity of Egyptians, Ashkali and Roma.

For the needs of the Ministry of Human and Minority Rights of Serbia and Montenegro a *detailed statistical analysis of the data from the most recent population census in the Republic of Serbia was made and published as a special edition of the Ministry*. According to the census results, 29 nationally distinct groups of inhabitants live in the Republic of Serbia (from the most numerous Serbs, whose number is 6 212 838, accounting for 82.86 percent of the total population, to the least numerous Tzintzars, totaling 293 or 0.003 percent of the total population of the Republic of Serbia). According to the results of the 2003 census in the Republic of Montenegro, the most numerous are Montenegrins with 273 366 people, followed by Serbs with 201 892 people, Albanians with 47 682 people, Muslims 28 714, Bosniacs 63 272, Croats 7 062, Roma 2 875, while persons belonging to other nationalities total 8 876. The above statistics clearly demonstrate not only the intention to review the subject matter of minority rights also in the context of small national minorities, but also the success of the authorities of Serbia and Montenegro in their efforts to exclude any attempt to impose a specific identity on the persons concerned.

With respect to the efforts of the authorities to exclude any attempt to impose a specific identity on the persons concerned, and in particular in relation to the Comment of the Advisory Committee expressed in Section 30, where the understanding is presented that during the census in Montenegro only partial answers on nationality were recorded, the authorities of Serbia and Montenegro point to the fact that the Methodology for the Preparation, Organization and Taking of the Census in the Republic of Montenegro envisages that a census taker, in keeping with Article 34 of the Constitution of the Republic of Montenegro, is obliged, in respect of the reply to the question about nationality, **“to record an exact answer as given by the polled person to**

**the question about his/her nationality”**. The Law on the Census of the Republic of Montenegro of 2003 provides that in the selection of census-takers a municipal census committee should pay special attention so as to select persons coming from the places where the census is taken, who are well acquainted with the terrain and know the language in which the census is to be taken (Article 11). In line with the presented legal arrangements and the Methodology for the Preparation, Organization and Taking of the Census, the authorities of the Republic of Montenegro included in the municipal electoral committees, as instructors and census-takers, a number of persons of Albanian ethnicity in the municipalities where that was necessary, i.e. in the municipalities where the Albanian national minority lives. Likewise, in the municipality of Podgorica efforts were made to include representatives of the Roma community as census-takers, who unfortunately did not have sufficient interest to attend training for census-takers and therefore did not master the census Methodology and consequently could not be included in the taking of the census. The stated legal arrangements, the census Methodology and practical measures for their application exclude the possibility for a specific identity to be imposed on the persons concerned and testify to the effort invested by the authorities of the Republic of Montenegro to obtain precise data on national minorities.

#### **Reply to Article 4.**

##### **Section 125.**

**The Advisory Committee *finds* that the legal guarantees against discrimination are limited in their scope and *considers* that they should be developed further.**

In the State Report, the authorities of Serbia and Montenegro have pointed to the constitutional provisions guaranteeing equality before the law and to a range of legal arrangements which, in various fields of social life, **prohibit discrimination based on the belonging to a specific national minority**. On the basis of the State Report, the Advisory Committee noted with satisfaction in Section 31 of its Opinion that there exist guarantees against discrimination, *inter alia* in the Union Charter of Human Rights and Minority Rights and Civil Freedoms, in the federal Law on the Protection of Rights and Freedoms of National Minorities and in criminal legislation as well as in civil law legislation. In the Supplement to its State Report, the authorities of Serbia and Montenegro have pointed out that the provisions of relevant laws may be considered a good legal framework for suppressing and punishing **discrimination based on the belonging to a national minority**, as well as that a special working group has been set up in Serbia and Montenegro for the drafting of an anti-discrimination law, which would completely regulate the issue of discrimination. The presented position of the authorities of Serbia and Montenegro was related to the creation of comprehensive anti-discrimination legislation, some kind of codification of anti-discrimination legislation, providing for new guarantees against discrimination not only against national minorities, **but primarily against other vulnerable groups**. To that effect, the authorities of Serbia and Montenegro share the opinion of the Advisory Committee that the legal guarantees against discrimination are limited in their scope, **but when it comes to discrimination on grounds other than ethnicity**. Bearing in mind that the Framework Convention is not a universal instrument for the protection of human rights, but that it is devoted to the protection of national minorities, as well as the fact that the Advisory Committee noted with satisfaction in Section 31 of its Opinion that there are guarantees against discrimination, the authorities of Serbia and Montenegro call on the Committee of Ministers not to take a stand in its Conclusions and Recommendations devoted to the prohibition of discrimination *based on ethnicity* that the legal guarantees *against such form of discrimination* are limited.

**Section 128.**

**The Advisory Committee *finds* that the Court of Serbia and Montenegro has not yet started operating and *considers* it important that the Court commence its activities as soon as possible.**

The authorities of Serbia and Montenegro underscore that the Court of Serbia and Montenegro was not in operation when the present Opinion of the Advisory Committee was being adopted. The election of judges and constitution of the Court itself had been delayed because the Parliament of the State Union was not in session for a prolonged period of time on account of the December election in the Republic of Serbia in 2003 and the expected changes in its composition. After the election in the Republic of Serbia, the Council of Ministers of the State Union established a Commission for Collecting Proposals for the Election of Judges and announced a public competition for the election of judges. The competition was published in the Official Gazette of Serbia and Montenegro dated 11 March 2004 and will be opened for a month. The Assembly of Serbia and Montenegro is expected to hold a session not later than 20 April and elect judges.

**Section 129.**

**The Advisory Committee *finds* that positive measures in the field of employment are important, in particular for persons belonging to those national minorities that were targets of past discriminatory measures in this sphere. The Advisory Committee *considers* that the positive measures that have been launched in this field should be expanded.**

The authorities of Serbia and Montenegro point out that also in the course of 2003 they continued with taking positive measures aimed at enhancing full and effective equality in the domain of economic life through an active employment policy. In addition to the municipalities in Southern Serbia, such measures were taken also in other areas – particularly within the realization of the program “A Nicer Serbia,” which was implemented in cooperation with UNDP. Of particular importance to the enhancement of full and effective equality in the domain of economic life in the Republic of Serbia is the adoption of a new Law on Employment and Insurance against Unemployment in 2003. Articles 31 and 34 of the said Law provide for incentives for enterprises which employ persons belonging to national minorities. Article 32 provides that the Government of the Republic of Serbia, at the proposal of the Ministry in charge of labor and employment affairs, upon the previously obtained opinion of the Social and Economic Council of the Republic of Serbia, shall adopt a Program of active employment policy for the Republic of Serbia. The priorities and measures envisaged by this Program include, *inter alia*, employment of specific categories of the unemployed, such as people older than 50 years of age, refugees and internally displaced persons, persons belonging to national minorities and women. The employer that takes into employment a person belonging to one of the mentioned categories may receive subsidies for contributions for pension and disability insurance, health insurance and insurance against unemployment, otherwise normally paid for the employees, for a period of 24 months.

The authorities of the Republic of Montenegro continued also in 2003 with the taking of positive measures aimed at improving active employment policy. The Montenegrin authorities adopted a program entitled *Legalization of the Existing and Creation of New Jobs* and passed a new Labor Law which enabled the transformation of labor relations into contractual relations and offered a high quality normative and institutional framework for the regularization of employment mediation on the labor market. The Law provides for the establishment of a Labor Fund as a new legal entity, whose founders are the Government of the Republic of Montenegro, the

Association of Employers and authorized trade union organizations. The Labor Fund will deal with the problems of the workers made redundant through technical, economic and organizational changes. The new Law provides for sub-financing of public works with a view to encouraging job creation. In April 2003 the authorities of the Republic of Montenegro adopted the Program *Legalization of the Existing and Creation of New Jobs* as well as a program for enterprise restructuring and support to the development of institutions.

### **Section 130.**

**The Advisory Committee *finds* that the authorities have not been able to secure full and effective equality between the majority population and Roma and that the housing and health situation in informal Roma settlements, as described in various reports, is alarming and not compatible with the principles contained in Article 4 of the Framework Convention. The Advisory Committee *considers* that these problems merit urgent attention and targeted measures, including as regards the legal status of such settlements.**

The authorities of Serbia and Montenegro seek to secure full and effective equality between the majority population and Roma through affirmative action measures.

With respect to the taking of affirmative action measures in favor of the Roma population the greatest achievements were made in the *field of education*. Continuing with the measures taken in the school year 2002/2003, the Ministry of Human and Minority Rights of Serbia and Montenegro has secured, in collaboration with the Ministry of Education and Sports and the Ministry of Social Affairs of the Republic of Serbia, also for the school year 2003/2004, free textbooks for Roma pupils. The drive covered 5 886 pupils and a total of 51 612 textbooks was provided. The textbooks were provided to all the Roma pupils who applied with the competent Ministries. The Ministry also started with providing scholarships for secondary school Roma students. In the school year 2003/2004 scholarships for 42 students were secured, among them being five students from Montenegro. The Ministry of Education and Sports of the Republic of Serbia provided aid to elementary schools in the territory of the Republic of Serbia which had submitted before 1 September 2003 projects for the promotion of instruction for Roma pupils (74 schools). Affirmative action measures in favor of the Roma population were undertaken also in the field of secondary and higher education. The Ministry of Human and Minority Rights, in collaboration with the Ministry of Education and Sports of the Government of the Republic of Serbia carried out an affirmative action aimed at enrolling candidates of Roma ethnicity in secondary schools and universities whose founder is the state. Forty-two university students and 39 secondary school students were enrolled. *Those candidates were enrolled who would not have been able to enroll based on their academic achievement if the measures of affirmative action had not been taken and they are all financed out of the government budget.* The Executive Committee of AP Vojvodina took a decision on 2 July 2003 on providing scholarships to students in the territory of AP Vojvodina for graduate studies at the faculties in the Republic of Serbia, which provides for affirmative action measures, i.e. which prescribes that half of the total number of envisaged scholarships based on an announced public competition will be granted to students belonging to national minorities who actively use the language of the national minority to which they belong, as well as that one scholarship must be reserved for a student belonging to the Roma national minority.

Measures of affirmative action in the *field of employment* are described in the State Report and comment on section 129 of the Opinion of the Advisory Committee.

In the *field of housing* preparations are underway for taking a range of measures in various local self-government units. For the needs of discussing the situation of Roma settlements and living conditions in them, the fact should be pointed out that town planning and promotion of living conditions in individual settlements, within the legal order of Serbia and Montenegro, fall within the competence of local self-government units. For the purpose of taking various measures in this field, the Ministry of Human and Minority Rights of Serbia and Montenegro has launched a survey *Roma Settlements, Living Conditions, and Possibilities for the Integration of the Roma in Serbia*. According to the results of that survey, there are 593 settlements in the Republic of Serbia with more than 100 persons belonging to the Roma national minority or more than 15 Roma families. Out of the total number of the Roma settlements, 44.8 percent is in rural areas, while 52.7 percent is located in urban areas. Twenty-eight percent of them were built on the basis of a plan, 34.6 were erected illegally, while 35.4 percent of settlements were built around a legally built core of a settlement. Out of 593 settlements, 34.1 percent was built on city buildable land, while 51.5 percent was built on buildable land outside of cities, with 13.6 percent built on a combined type of land. With respect to permissibility of construction, in 67.6 percent of settlements it is allowed to build, but that does not imply that owners of the facilities possess necessary town planning, technical and building permits. Temporary building permits were issued in 15.4 percent of the settlements, while construction is prohibited in 16.3 percent of settlements which are located mainly in urban areas.

According to the *criterion of infrastructure and land development*, 43.5 percent of the Roma settlements are considered to be predominantly unsanitary, 44.2 percent of settlements are considered to be predominantly developed, while there is 11 percent of completely developed settlements. Predominantly unsanitary settlements are those where the utility infrastructure is incomplete, which were built spontaneously or where housing units were built from makeshift materials or mud. Settlements with partial infrastructure are considered to be predominantly developed.

With respect to the level of comfort, in terms of modern conveniences in the housing units, one needs to point out that the percentage of settlements with primarily comfortable housing units amounts to 36.4, meaning that the housing units in those settlements were built from hard materials and that they have appropriate utility infrastructure. Settlements with non-comfortable housing units account for 42.7 percent **and that percentage tallies with the percentage of unsanitary settlements in the Republic of Serbia!!!** The settlements with barracks and sheds account for 6.3 percent of the total number.

In 90.3 percent of the Roma settlements there is a power transmission grid. In 64.9 percent of settlements there is a power transmission grid to which all the families have access. In 25.4 percent of settlements most of the inhabitants have access to this grid. Without a power transmission grid there are 5.8 percent of Roma settlements and in another 3.45 percent of settlements only a small number of families have electricity. Consequently, 9.2 percent of the Roma settlements can be considered to be without electricity, which is higher in comparison with the settlements where other national communities live, but the authorities of Serbia and Montenegro are of the opinion that this situation cannot be described as alarming.

A water supply network exists in 47.1 percent of Roma settlements, while in another 18.6 percent of settlements most of the families have access to the water supply system. The information on the existence of the water supply network in a settlement does not mean that families have water in their housing units. Without waterworks is 27.3 percent of settlements, while in 6.3 percent of settlements only a smaller part is covered by the waterworks.

The sewage system exists in 24.2 percent out of 593 settlements, and in another 10.25 percent of settlements larger parts are covered by the sewage system. A large number of settlements, 65.1 percent of the total number, do not have a sewage system.

Bearing in mind the results of the survey, which point to the problems regarding living conditions in the Roma settlements, but which cannot be fully characterized as alarming, the authorities of Serbia and Montenegro have discussed with the competent local authorities, with a view to preparing adequate measures, a possibility for improving living conditions in Roma settlements. The result of such activities is the elaboration of a program for social housing which should be launched in the city of Belgrade and whose main beneficiaries should be Roma from informal settlements. The program envisages the construction of 5000 apartments for the socially vulnerable population. The city of Belgrade set aside resources out of its budget in the amount of around 11,500,000 euros for these purposes. The authorities of Serbia and Montenegro have endeavored to direct attention of international donor agencies to the problem of implementation of the said program.

### **Section 132.**

**The Advisory Committee *finds* that the authorities' increasing commitment to Roma issues is reflected in the initiative to draw up a comprehensive Strategy for the Integration and Empowerment of Roma and *considers* that a strategy should be finalised and adopted as a matter of urgency, and that such a strategic approach should also be adopted and implemented by the authorities of Montenegro.**

The authorities of Serbia and Montenegro point to the fact that the official adoption of the Strategy for the Integration of Roma was objectively slowed down by the constitutional reconstruction of the State Union and the early election in the Republic of Serbia. In the Supplement to the State Report, the authorities of Serbia and Montenegro have indicated the measures taken to date with a view to preparing the adoption and implementation of the Strategy. The special measures comprise the establishment of a body entrusted with pursuing those activities (the Secretariat for the Strategy for the Integration of Roma), the setting up of an inter-ministerial group for Roma issues and the taking of a range of measures, primarily in the field of education, for the purpose of promoting full and effective equality. The said measures are in line with the recommendations contained in the Strategy (procurement of textbooks, affirmative action related to the enrolment of university and secondary school students, aid programs for schools aimed at promoting instruction for Roma pupils). Proceeding from the principle of cultural autonomy and transparency in taking all the measures of the new minority policy, and in particular of the measures aimed at promoting the status of the Roma, the authorities of Serbia and Montenegro have paid special attention in their hitherto activities in relation of the Strategy to the cooperation with the National Council of the Roma national minority, which is the protagonist of the cultural autonomy of the Roma national minority. Representatives of the Secretariat for the Roma National Strategy within the Ministry of Human and Minority Rights of Serbia and Montenegro, in cooperation with the OSCE Mission in Serbia and Montenegro, upon the constitution of the National Council of the Roma national minority, organized a range of round tables where many issues were discussed with relevant representatives of the National Council, related to the content, adoption and implementation of the Strategy. The round tables were held in Bujanovac (devoted to education and culture), Prokuplje (devoted to political participation and participation in public life), Sabac (devoted to social issues), Novi Sad (devoted to information) and Belgrade (devoted to economic empowerment and adequate housing). The authorities of Serbia and Montenegro are committed to the objective of the National Council of the Roma national minority adopting the Strategy for

the Integration of Roma, thus fully confirming the readiness of Serbia and Montenegro to make the Strategy and its implementation an ongoing process of consultation and cooperation with the protagonist of the cultural autonomy of the Roma national minority. As a result of such cooperation and commitment, the National Council of the Roma national minority adopted the Strategy at its meeting of 6 April 2004. Furthermore, the authorities of Serbia and Montenegro, in cooperation with representatives of the National Council of the Roma national minority, have commenced the drafting of an action plan for the implementation of the Strategy, which contains a detailed description of tasks and measures, with measurably set costs, objectives and time limits and clearly defined entities responsible for their realization. The Republic of Montenegro will also draw up action plans for those fields of social life falling into its competence, *inter alia*, within the framework of its participation in the program “The Decade of Roma” which is implemented under the auspices of the World Bank. The strategic approach to the work on the promotion of the status of Roma was adopted by the authorities of the Republic of Montenegro and they have clearly demonstrated it by adopting the Poverty Reduction Strategy Paper of the Republic of Montenegro in November 2003, which contains a special section devoted to Roma, Ashkali and Egyptians, as well as by preparing a strategy for refugees and displaced persons of the Republic of Montenegro, among whom there is a large number of persons of Roma ethnicity.

### **Section 133**

**The Advisory Committee finds that there are wide discrepancies between the existing official statistics of the Government and the unofficial estimates of the actual number of persons belonging to certain national minorities in Serbia and Montenegro and considers that the authorities should identify further ways and means of obtaining reliable statistical data.**

Official statistics on the number of persons belonging to national minorities in Serbia and Montenegro were gathered in the population censuses in Serbia, in 2002, and in Montenegro in 2003. Bearing in mind statistical standards and the practice of census-taking which was assessed as very successful also by international experts, the authorities of Serbia and Montenegro hold the view that the data gathering process left no room for improvisation and find that the discrepancy between official statistical data and unofficial estimates of the number of persons belonging to national minorities is a consequence of non-corroborated estimates. The authorities of Serbia and Montenegro base their assertion on the fact that possible risks of improvisations in data gathering in a census would equally affect both persons belonging to national minorities and persons belonging to the majority nation. Furthermore, a rise in the number of persons belonging to certain national minorities, as is the case with the Vlach national minority, which in the population census of 1991 in the Republic of Serbia numbered 17 807 persons, and according to the census of 2002 it numbers 40 054, testifies to the fact that citizens have full freedom to declare their ethnicity in population censuses.

The most recent censuses in the Republic of Serbia in 2002 and in the Republic of Montenegro in 2003 established that there are 108 193 Roma in Serbia, and 2 875 Roma in Montenegro. However, the authorities of Serbia and Montenegro are fully aware of the existence of the so-called ethnic mimicry among persons belonging to the Roma national minority. In order to prevent possible undermining of the ability of the state to design and implement measures aimed at securing full and effective equality of Roma with the majority population, the authorities have determined further methods and tools to arrive at the number of Roma. Through the survey *Roma Settlements, Living Conditions and Possibility for Integration of Roma in Serbia* 593

settlements were identified. Those settlements are inhabited by a total of 201 353 indigenous Roma and 46 238 internally displaced Roma from Kosovo and Metohija. In the Republic of Montenegro, according to the results of the 2003 population census there are 2 875 Roma, while the authorities of that Republic estimate their number, and state it in the Poverty Reduction Strategy Paper, at 20 000. An increase in the number of the Roma is a consequence of internal migrations from Kosovo and Metohija and the return of a sizeable number of Roma who have been repatriated from European countries under readmission agreements. The authorities of Serbia and Montenegro point to the fact that it is very difficult to establish an exact number of Roma, as well as that the estimates of Roma organizations of 500 000 to 600 000 Roma in Serbia and Montenegro are exaggerated. The authorities of Serbia and Montenegro assure the Advisory Committee and the Committee of Ministers that they will take into account the stated data in the designing and application of measures for securing full and effective equality, which has already been demonstrated in the formulation of the Action Plan for the implementation of the Strategy for the Integration of Roma.

### **Reply to Article 5.**

#### **Section 134.**

**The Advisory Committee *finds* that state support for societies protecting and promoting cultures of national minorities has been provided often on an *ad hoc* basis only and there are substantial differences in the commitment of the relevant authorities to such initiatives. The Advisory Committee *considers* that the authorities should pay careful attention to the initiatives of persons belonging to those groups that have only relatively recently been defined as national minorities. Furthermore, it *considers* that the authorities should pursue the establishment of the Fund for the Promotion of Social, Economic, Cultural and General Development of National Minorities as a matter of priority and ensure the involvement of representatives of national minorities in the relevant decision-making process.**

Serbia and Montenegro provides significant support to the societies protecting and promoting cultures of national minorities. The support provided to those organizations comes from all the organizational levels of public authorities – from the level of the State Union to the level of local self-governments. The State Report lists traditional cultural events which have been held in the territory of Serbia and Montenegro for decades and which are mainly organized by the societies protecting and promoting cultures of national minorities. The state supports traditional festivals of *Hungarian* artistic and folklore ensembles in the following events: “Durindo”, “Djendjesbokreta”, “Vive-Vitkijev’s Days” and “Play, Flute, Play”. The *Slovak* societies protecting and promoting culture present their achievements in the field of culture in traditional events “Slovak Popular Festivities”, “Sing and Dance”, “The Pivnica Field” and “Dance, Dance” (held for 34 years now!!!). The *Romanian* societies protecting and promoting culture present their achievements in the field of culture and folklore in meetings of amateur theaters organized by the Federation of Amateur Theaters from Alibunar, at the “Festival of Fanfare” held every November in Vrsac and organized by the Community of Romanians of Yugoslavia, at the “Children’s Festival of Romanian Music and Folklore” held for ten years now, etc. *Ruthenian and Ukrainian* societies hold annual festivals of amateur drama “Petro Risnic Djadja”, annual festivals of music and folklore “The Red Rose”, annual festivals of original folklore “The Kucur Harvest”, etc. In Yugoslavia, i.e. in Serbia and Montenegro, *Roma* societies protecting and promoting culture have held “Festivals of Cultural Achievements of Roma” for decades. The cultural life of the *Vlach* national minority is reflected in the work of a series of folklore societies which preserve and carry on picturesque tradition and their most renowned

traditional annual events are “The Slatina Gathering”, “Motifs of Homolje”, etc. ***All the above mentioned activities of the societies protecting and promoting cultures of national minorities are supported by various levels of organization of government.*** The authorities of Serbia and Montenegro are of the opinion that the differences in support of relevant bodies to the initiatives of the societies protecting and promoting cultures of national minorities *should not be interpreted as differences in the commitment of those bodies, as stated in the Opinion of the Advisory Committee, but as differences in economic capacities of different regions and levels of government organization.* The Ministry of Human and Minority Rights of Serbia and Montenegro allocated resources in 2002 and 2003 under the Budget and separate decisions for each quarter published in the Official Gazette of FR Yugoslavia, i.e. Official Gazette of Serbia and Montenegro, for financing programs of and providing support to organizations of national minorities in the amount of 15 million dinars a year. That is certainly not the kind of support which meets all the needs of minority organizations, but one has to take into account the economic capacity of the country, as well as the fact that the annual budget of the Ministry for 2003, for all the activities and salaries of employees, amounted to 826 000 euros. Each of the decisions for quarterly allocations of resources set out amounts for, *inter alia*, the following items:

support to organizations of national minorities for the procurement of equipment and capital investment – 200,000 dinars on a quarterly basis

*support to cultural events of national minorities*– 300,000 dinars on a quarterly basis

*holding traditional events and marking jubilees of national minorities* – 200,000 dinars on a quarterly basis.

Out of the mentioned resources in the course of 2002 and 2003 the Ministry of Human and Minority Rights of Serbia and Montenegro was financially supporting a range of activities of the societies protecting and promoting cultures of national minorities. The support was provided to *Roma associations* – “Cenpi”, “Rominterpres”, “The Roma Society Nis”, “The Roma Society Obrenovac”, “Roma Cultural Society”, “Amaro-drom Roma Association”, “Presevo Roma Association”, “Federation of Roma Societies of the Pcinja and Jablanica District”, “Roma Association Belgrade”, “Roma Cultural Center Leskovac”, “Roma Music Association – Novi Sad”, “Roma Women’s Center Bibija”, etc., *Albanian associations* – “Albanian Society Perspective”, the society “Abdula Kasnica – Presevo”, “Medvedja Multiethnic Center”, *Slovak associations* – “Slovak Cultural Society”, the cultural and artistic society “Brotherhood and Unity”, the theater “VHB Backi Petrovac”, “Ethno Center Babka”, *Ruthenian associations* – “Society for the Ruthenian Language, Literature and Culture”, the cultural hall “Ruski Krstur”, the Ruthenian popular theater “Djadja”, the cultural and artistic society “Harvest”, *Hungarian associations* – “The Kanjiza Circle”, the cultural hall “Jozef Atila – Debeljaca”, *Ukrainian associations* – the society for the Ukrainian language, literature and culture “Prosvita”, *Bosniac associations* – the Center for the Study and Preservation of Cultural Heritage of Muslims – Bosniacs in Montenegro, the Bosniac cultural community of Sandzak “Preporod”, the association “Arh”, *Romanian associations* – the Community of Romanians of Yugoslavia, the cultural and artistic society “Adi Endre Sajan”, the Federation of Amateur Theaters of Romanians in Vojvodina, etc. This is a selection of examples to illustrate the wide-ranging support of the Ministry of Human and Minority Rights of Serbia and Montenegro to numerous cultural and artistic societies of persons belonging to national minorities from different parts of the country. The authorities of the Republic of Montenegro supported in 2003 a range of societies protecting and promoting cultures of national minorities – “Art Club” from Ulcinj,

“Ilirikum” from Ulcinj, “Association of Artists and Intellectuals Shepsa” from Ulcinj, “Croatian Cultural Society Progress” from Tivat, “Croatian Civil Society” from Kotor, “Almanah”, the cultural and publishing society of Muslims of Montenegro, the Roma Association “The Beginning” from Niksic, etc.

The fact that the state supports the societies protecting and promoting cultures of national minorities, and in particular events that have a traditional character, refutes the finding of the Advisory Committee that the state support to societies protecting and promoting cultures of national minorities is provided on an ad hoc basis only. **In view of the presented data, the authorities of Serbia and Montenegro request that the Conclusions and Recommendations of the Committee of Ministers do not contain statements that the state support to societies protecting and promoting cultures of national minorities is provided on an ad hoc basis.**

The authorities of Serbia and Montenegro pay special attention to cultural initiatives of persons who belong to small national minorities, such as Ashkali and Egyptians. In cultural life, the Ashkali are active through their organization “Cultural Society of Ashkali”, while Egyptians are active through the “Association of Egyptians” and “Association of Egyptians Evdzit”. The authorities in Serbia and Montenegro have undertaken certain activities, primarily in the field of culture, with a view to promoting the status and affirmation of rights of Ashkali and Egyptians. The Ministry of Culture of the Republic of Serbia financially supported the starting of the “Ashkali Newsletter”, a magazine for cherishing culture and tradition of Ashakli. Financial support to the Cultural Society of Ashkali was provided by the Ministry of Human and Minority Rights for several events. The Ministry supported the marking of 15 April, Ashkali Day, in 2001 and 2002, the organization of a cultural and artistic program in March 2001 and the holding of the event “Days of Ashkali Culture” from 10 to 15 June 2002. Financial support to the Cultural Society of Ashkali was provided also for purchasing time on private TV station Art from Belgrade to broadcast the recorded material “Days of Ashkali Culture”.

In the Supplement to the State Report it was pointed out that the Ministry of Human and Minority Rights of Serbia and Montenegro, which is under the provisions of the Law on the Protection of Rights and Freedoms of National Minorities responsible for proposing regulations determining the composition and activities of the Fund for the Promotion of the Status of National Minorities, intends to initiate the passage of a document *stipulating that the Fund is to comprise also representatives of national councils of national minorities*. The authorities of Serbia and Montenegro are of the opinion that through such arrangement the provisions of the Law on the Protection of Rights and Freedoms of National Minorities regarding cultural autonomy will be implemented also in the domain of financing projects in those fields of social life where the councils represent their respective national minorities (culture, education, information and official use of the language and script). **The authorities of Serbia and Montenegro have not yet enacted the required regulations because the process of constituting national councils of national minorities has not yet been completed.** The authorities of Serbia and Montenegro find that the establishment of the Fund is of great importance and they are committed to not depriving all respectable minorities of the possibility to take part in the decision-making process concerning the allocation of support to cultural institutions out of the Fund’s resources. In this context, the authorities of Serbia and Montenegro recall that the national councils of the Albanian, Vlach and Macedonian national minorities, as well as councils of small national minorities, such as Greek, Gorani, Turkish, German and Czech, have not yet been constituted. The authorities of Serbia and Montenegro are of the opinion that the establishment of the Fund without representatives of the mentioned minorities

would mean unjustified omission of their representatives from the process of making decisions on the allocation of support to cultural initiatives out of the resources of the Fund.

### **Reply to Article 6.**

#### **Section 136.**

**The Advisory Committee *finds* that inter-ethnic relations are still seriously affected by the aggressive policies of the past regime and certain disconcerting instances of hostility against persons belonging to national minorities are reported. The Advisory Committee *considers* that promotion of tolerance should be consistently reflected in the statements and acts of authorities and other relevant actors and that initiatives aimed at promoting a spirit of tolerance and intercultural dialogue need to be expanded further, through, *inter alia*, the local level councils for inter-ethnic relations and the "Federal" Council of National Minorities.**

The authorities of Serbia and Montenegro share the opinion of the Advisory Committee that possible instances of hostility against persons belonging to national minorities are a consequence of aggressive policies of the previous regime and by their statements and acts they endeavor to promote the spirit of tolerance and intercultural dialogue. Of particular importance in that context are the statements of Serbia and Montenegro's top officials, which express in clear terms an apology for and regret at sufferings experienced during the armed conflict in the territory of the former Yugoslavia. During his visit to Bosnia and Herzegovina in November 2003, the President of Serbia and Montenegro, Mr. Svetozar Marovic made an apology for "any evil and distress that anybody in Bosnia and Herzegovina suffered from anyone from Serbia and Montenegro." A similar statement was made by the President of Serbia and Montenegro also on the occasion of his meeting with the Croatian President, Mr. Stjepan Mesic. During his visit to Cavtat (the Republic of Croatia), the President of the Republic of Montenegro, Mr. Milo Djukanovic, pointed out that he wanted to express regrets, in his own name and on behalf of the citizens of the Republic of Montenegro, to all the citizens of the Republic of Croatia for all the pain, all the plight and all material losses inflicted upon them by any representative of Montenegro in the ranks of the Yugoslav People's Army (JNA). The authorities of Serbia and Montenegro consider the above acts as very important measures aimed not only at normalization of the circumstances in the region, but also at promoting the spirit of tolerance, in particular with respect to the Bosniac and Croatian national minorities in Serbia and Montenegro.

The authorities of Serbia and Montenegro are of the opinion that the resolution of the issue of trials for war crimes before domestic courts is of exceptional importance to the creation of an atmosphere of mutual respect and cooperation. To that effect, the authorities of Serbia and Montenegro recall that in several cases trials have started before domestic courts for war crimes committed during the conflicts from 1992 to 1999. Particularly important are trials for crimes in Ovchara (Vukovar, Croatia) and verdicts against members of certain paramilitary formations (Scorpions) that were active in Kosovo and Metohija during the conflict in that southern Serbian province (sentenced to 20 years of imprisonment). Of particular importance to the process of confidence building and facing the past is also a trial for the abduction and disappearance of 19 persons of Bosniac ethnicity in Strpci in 1993. The perpetrators of those criminal offences were sentenced to 15 years of imprisonment.

The authorities of Serbia and Montenegro continuously apply measures for promoting the spirit of tolerance and intercultural dialogue. Of particular significance are the measures of the Ministry of Human and Minority Rights of Serbia and Montenegro – a special campaign

*Tolerance* which is carried out through a number of activities (e.g. the media campaign, the annual tolerance award, celebrations of World Tolerance Day, the *Tolerance* contest for best works by pupils and for highest achievers, organization of special multiethnic sport competitions, etc. on which exhaustive data can be found in the State Report and its Supplement). The organization of a range of seminars and the publishing activity supported by the state have special importance for the promotion of intercultural dialogue. In that context it should be pointed to the publication of a large number of books on national minorities and their culture. Particularly important is a publishing undertaking of the Ministry of Human and Minority Rights in 2003 – *Dictionary of Religious Terms* which will contribute to the broadening of inter-religious dialogue and tolerance. The initiatives aimed at promoting the spirit of tolerance and intercultural dialogue are considered by the competent state bodies with special attention and the authorities of Serbia and Montenegro stand ready to continuously expand them.

The institutional frameworks for the promotion of interethnic relations and intercultural dialogue in Serbia and Montenegro are numerous and robust. The authorities of Serbia and Montenegro share the opinion of the Advisory Committee that institutional frameworks for the promotion of tolerance and intercultural dialogue should be expanded also through the establishment of the federal Council for National Minorities and underscore that the federal Council has not yet been formed due to objective reasons explained in more detail in the reply to section 167 of the Opinion of the Advisory Committee.

### **Section 137.**

**The Advisory Committee *finds* that there is a need to ensure that ethnic discrimination and other problems faced by persons belonging to national minorities are addressed with increasing vigour by the law-enforcement authorities and *considers* that such important initiatives as the introduction of a multi-ethnic police force in Southern Serbia should be expanded further.**

The authorities of Serbia and Montenegro are seeing to it that the law-enforcement agencies decisively solve cases of possible ethnic discrimination or nationally motivated violence or intolerance. That is achieved in four basic manners: 1) through consequent implementation of the provisions of relevant laws prohibiting discrimination in various areas of social life, 2) by recording and monitoring detailed statistics on the implementation of the criminal code incriminating discrimination (Article 154 of the Criminal Code of Serbia and Montenegro) and the fomenting of national, racial or religious hatred, discord or intolerance among the peoples and national minorities living in Serbia and Montenegro (Article 134 of the Criminal Code of Serbia and Montenegro), 3) by keeping and monitoring records on nationally motivated violence against particularly vulnerable groups, such as Roma, and 4) by creating conditions to promote the activities, training and preparedness of law-enforcement officers, in particular of the police, to vigorously solve all possible cases of discrimination or nationally motivated violence or intolerance.

1) About legal guarantees against discrimination and ethnically motivated violence or intolerance more has been said in the comment on section 125 of the Opinion of the Advisory Committee.

2) The records related to the application of the provisions of the Criminal Code on ethnic discrimination are very detailed. According to the data of the Ministry of the Interior of the Republic of Serbia, in the period from early 1992 to the end of 2003, criminal charges were

pressed against 88 persons for the commission of 62 criminal offences laid down in Articles 134 and 154 of the Criminal Code of Serbia and Montenegro. In the structure of criminal offences forbidding ethnic discrimination, committed over the said period, the criminal offences of fomenting national, racial and religious hatred, discord or intolerance which protect persons belonging to national minorities account for the largest share – 42, while only one criminal offence of racial and other discrimination was recorded, which protects all persons (including non-citizens). Nine persons were sentenced to imprisonment for the commission of those offences by virtue of final court judgments.

3) According to the data of the Ministry of the Interior of the Republic of Serbia, in the period from 1 January 1992 to 31 December 2003, in the territory of the Republic of Serbia 176 assaults on 218 persons belonging to the *Roma national minority* were recorded. Not all the assaults were motivated by nationalist and racist reasons, instead the majority of assaults were made for other motives, such as gain, unsettled family and property relations, fights, etc. Nationally motivated violence against persons belonging to the Roma national minority was perpetrated by members of an informal group called Skinheads, who first appeared in the Republic of Serbia in the early 1990s. The Ministry of the Interior of the Republic of Serbia identified more than 400 members of that group, of whom more than 200 in the territory of the city of Belgrade. Over the period from 1 January 1992 to 31 December 2003 members of the said group committed 46 assaults on 79 Roma for nationalist and racial motives and one assault on a person of other ethnicity. On account of those assaults members of the police force deprived nine persons of their liberty, namely: two persons for the murder of Roma Dusan Jovanovic on 18 October 1997, one person for the murder of Roma Vitko Dekic in Cacak, five for the commission of the criminal offence of fomenting national, racial and religious hatred, discord or intolerance referred to in Article 134 of the Criminal Code of Serbia and Montenegro and two persons for the commission of the criminal offence of aggravated assault against Roma Boban Petrovic on 6 March 1995. Thirty-nine members of the Skinheads group were charged with a misdemeanor. The measures undertaken by the Ministry of the Interior of the Republic of Serbia prevented an escalation of assaults against Roma, so that after 2000 a significantly lower number of assaults has been recorded. The most high-profile incident since democratic change occurred on 11 March 2001 in Belgrade when a fight broke out in Vojvode Stepe Street between a larger number of members of the Skinheads group and Roma, but police intervened and the fighting was stopped, with a large number of persons being charged with a misdemeanor. In the course of 2003 and 2004 there were cases of intolerance against Roma. In most of the cases the competent authorities responded quickly. Of particular importance was a concerted reaction of the Ministry of Human and Minority Rights of Serbia and Montenegro, the Ministry of Education and Sports of the Republic of Serbia and the headmaster of the Secondary Medical School in Zvezdara in Belgrade, as well as of the school board of that school, with respect to the racially motivated intolerance of two students of that school against a girl student of Roma ethnicity. By virtue of a decision of the competent school board, which was approved by the Ministry of Education and Sports, the girl students who had insulted the Roma girl student on grounds of her ethnicity were expelled from the school.

4) Since democratic change in the country, extraordinary attention has been paid to the promotion of activities and training of the police and judiciary. The authorities of Serbia and Montenegro are aware of the fact that in the ranks of the police there were cases of prejudices against persons belonging to national minorities, but they underscore that the police have undergone significant reform, especially with respect to the change in their *modus operandi*, internal control and their composition.

In respect of *modus operandi* the law-enforcement agencies both in Serbia and in Montenegro, have been reformed to a significant degree. The police in the member States, in the process of comprehensive reform and building of a multiethnic democratic society based on the rule of law, are undergoing significant changes which will enable them to become a true service of the citizens. In addition to new instructions regarding police ethics, which contain principles directed against discrimination and toward the protection of national minorities, police officers and representatives of the judiciary have attended a number of training courses and special trainings on the significance of the respect for and promotion of human and minority rights, organized in cooperation with international organizations. In that context, one needs to specially point to the activities of the Judicial Center which organized, with the assistance of foreign donors, a very successful training for judges in the Republic of Serbia, as well as the studying of the subject "Human Rights and Freedoms" at the Police Academy in Danilovgrad, where several round tables were organized with the same topic. New initiatives such as the introduction of community policing, already in place in certain communities, bring the police closer to citizens and contribute to the creation of an atmosphere of mutual respect and cooperation.

Since democratic change the police have been placed completely under civilian control, which is demonstrated also in the creation of special *mechanisms for the purpose of supervising the work of law-enforcement agencies*. In that context, one needs to particularly stress the setting up of the General Control within the Ministry of the Interior of the Republic of Serbia, whose main task is to ensure that the work of members of the Ministry of the Interior is legal and professional.

The authorities in Serbia and Montenegro are investing effort in order for the *composition of the police forces* to contribute to the creation of mutual respect and cooperation between the state and national minorities. Several initiatives to that effect should be singled out. In addition to the establishment of the multiethnic police in Southern Serbia, one will start with taking affirmative action measures in favor of the persons belonging to the Roma national minority for enrolment in specialized schools of internal affairs – Secondary School and Police Academy. In terms of reviewing the implementation of Articles 6 and 15 of the Framework Convention, the authorities of Serbia and Montenegro point to the fact that **the police force in the Republic of Serbia is in the full sense of the word multiethnic by its composition**. The Ministry of the Interior of the Republic of Serbia currently employs 495 persons belonging to the Hungarian national minority, accounting for 1.3 percent of the total number of employees (according to the results of the 2002 census, the Hungarians account for 3.9 percent of the total population of Serbia), 429 Muslims – Bosniacs, accounting for 1.12 percent of the total number of employees (according to the results of the 2002 census, Bosniacs account for 1.8 percent of the total population), 322 Albanians, accounting for 0.84 percent of the total number of employees (according to the results of the 2002 census, Albanians account for 0.82 percent of the total population of Serbia), 125 Croats accounting for 0.32 percent of the total number of employees (according to the results of the 2002 census, Croats account for 0.94 percent of the total population), 120 Macedonians or 0.31 percent percent of the total number of employees (according to the results of the 2002 census, Macedonians account for 0.34 percent of the total population), 40 Roma or 0.1 percent of the total number of employees (officially, according to the 2002 census, Roma account for 1.44 percent of the total population). In addition to the above, another 411 persons belonging to other national minorities are employed in the Ministry, accounting for 1.07 percent of the total number of employees, as well as 1 129 persons who declared themselves as Yugoslavs, accounting for 2.96 percent of the total number of employees. Among the managerial staff of the Ministry of the Interior of the Republic of Serbia, there are 84 Muslims – Bosniacs, accounting for 1.96 percent of the total number of managerial posts, 54 Hungarians or 1.26 percent of the total number of managerial posts, 19 Croats or 0.44 percent of the total number of managerial posts, 9

Albanians or 0.21 percent of the total number of managerial posts and 6 Macedonians or 0.14 percent. In addition, there are 47 persons belonging to other national minorities in the managerial posts in the Ministry, accounting for 1.1 percent of the total number of managerial posts. With a view to increasing the share of persons belonging to the Hungarian national minority in the police force of the Republic of Serbia, a special provision was incorporated in the Agreement on the Protection of National Minorities with the Republic of Hungary, which is in the procedure of ratification in Serbia and Montenegro, by virtue of which the Contracting Parties have expressed their willingness to achieve appropriate representation of national minorities in the executive, particularly in the police forces.

#### **Section 141.**

**The Advisory Committee *finds* that certain manifestations of anti-semitism have been reported in Serbia and Montenegro and *considers* that particular attention should be paid to the prevention as well as investigation and prosecution of such incidents.**

The authorities of Serbia and Montenegro are paying great attention to monitoring whether there are incidents of anti-Semitism in country's social life. According to the data of the Ministry of Human and Minority Rights of Serbia and Montenegro, since democratic change in October 2000, a mere four cases of manifestations of anti-Semitism happened. These are the printing of the book "Protocols of the Sages of Zion", the drawing of swastikas on some Jewish buildings in Belgrade in December 2000 and February 2001 and the writing of a graffito on the building of the Faculty of Philosophy in Belgrade in March 2001, connecting one of the then Deputy Prime Ministers in the Government of the Republic of Serbia, a professor at that Faculty, with the alleged international Jewish conspiracy. Bearing in mind the negligibility of manifestations of anti-Semitism, the authorities of Serbia and Montenegro have strongly denounced the Report of the CoE observers of the early parliamentary election in the Republic of Serbia in December 2003, where claims were made that the election had marked "a surge of radical and anti-Semitic parties" in the Republic of Serbia. The officials of Serbia and Montenegro have condemned the disputed stipulations in the mentioned Report as unargued and unfounded, and the Deputy Chairperson of the Community of Jewish Municipalities in Serbia and Montenegro, Mr. Aleksandar Gaon, underscored in respect of that Report *a stand of the Community of Jewish Municipalities that there is no anti-Semitism in Serbia and Montenegro*. Considering the mistake contained in the Report of the CoE observers of the early parliamentary election in the Republic of Serbia, the presented statistics, as well as the stand of the Community of Jewish Municipalities of Serbia and Montenegro, **the authorities of Serbia and Montenegro request that the Conclusions and Recommendations of the Committee of Ministers do not contain statements regarding anti-Semitism in Serbia and Montenegro.**

#### **Reply to Article 7.**

#### **Section 142**

**The Advisory Committee *considers* it important to ensure that any undue citizenship criteria or other restrictions are eliminated from the constitutional and other guarantees of the constituent states of the Union pertaining to the implementation of Article 7 of the Framework Convention.**

As was mentioned in the reply to section 122 of the Opinion of the Advisory Committee, the authorities of Serbia and Montenegro are of the opinion that citizenship may not be excluded from the criteria for defining national minorities. In line with that, *the authorities of Serbia and Montenegro consider that the rights provided for by Article 7 of the Framework Convention are*

*rights which persons belonging to national minorities enjoy as citizens, accordingly that they are in that sense fully guaranteed and exercised in the legal order of Serbia and Montenegro.*

The authorities of Serbia and Montenegro point out that the freedom of peaceful assembly and freedom of association are guaranteed to persons who do not have citizenship of Serbia and Montenegro on the strength of relevant constitutional enactments and the ratified Convention on the Elimination of All Forms of Racial Discrimination (Article 5). Unlike the former FR Yugoslavia's Constitution, which guaranteed the freedom of assembly only to citizens, and the Constitution of the Republic of Serbia which enshrines a similar arrangement, *the Charter of Human Rights and Minority Rights and Civil Freedoms, which has legal precedence over the Constitutions of the member States, in its Article 31 guarantees the freedom of peaceful assembly without mentioning citizenship as a requirement for enjoying the said freedom. An identical arrangement is incorporated with respect to the freedom of association. Article 32 of the Charter of Human Rights and Minority Rights and Civil Freedoms stipulates that everybody shall be entitled to the freedom of association in Serbia and Montenegro.*

### **Reply to Article 8.**

#### **Section 143.**

**The Advisory Committee *finds* that there are certain reported differences in approach to different religions in the army and in other contexts, and it *considers* that, where such differences exist, particular attention must be paid to the situation of persons belonging to national minorities.**

The Army of Serbia and Montenegro and other authorities in Serbia and Montenegro pay particular attention to the situation of believers who belong to national minorities. In that context, the authorities of Serbia and Montenegro point to the fact that the provisions of the Law on the Army of Serbia and Montenegro do not provide for any legal grounds for differences in the approach to different religions that would not be in line with the nature and purpose of the Framework Convention for the Protection of National Minorities. On the contrary, the Law on the Army of Serbia and Montenegro and a range of practical measures consequently respect all the religions in the Army. The Law on the Army of Serbia and Montenegro in its Article 296, para. 2, explicitly sets out the right of a person **not to do military service under arms or to do civilian service instead, for reasons of religion or other reasons related to conscientious objection.**

It should be specially pointed to the fact that the Army of Serbia and Montenegro *organized* in 2003, while taking into account *special needs of persons belonging to different religions, special diets for such persons*. At issue is primarily a diet of the believers of the Islamic religious community and other religious communities whose diets are different from the one of the majority population. It is important to stress that such diet is organized in all garrisons of the Army of Serbia and Montenegro and that it *under no circumstances implies any differentiation among troops and officers in the preparation and distribution of meals*. The Army of Serbia and Montenegro has ensured that the energy and nutritional value of such diet is equal in all aspects to other meals served to the members of the Army of Serbia and Montenegro. The legal grounds for the implementation of the said measures are the Rules on the Amendments to the Rules on Meals in the Army of Serbia and Montenegro of June 2003, which in their Article 26 stipulate that "one of the dishes provided to members of the Army of Serbia and Montenegro shall be prepared without pork or lard, thus securing a diet for persons with specific dietary requirements." The same Rules, in their Article 11, provide that the most important *religious holidays of all religious communities shall be equal in terms of meals to the public holidays of the State Union and member States, which implies serving special meals for that occasion.*

Similarly, on the basis of the said Rules, the Chief of the General Staff of the Army of Serbia and Montenegro issued on 28 October 2003 an Order specifying that, for members of “Islamic religion, during the Ramadan fast, a special dietary regime shall be organized which *recognizes the tradition and requests of their religion*”, i.e. that breakfast shall be served to them before dawn and dinner after sunset.

Bearing in mind the above, the authorities of Serbia and Montenegro request that **Conclusions and Recommendations of the Committee of Ministers do not contain possible statements** on negative differences in approach to different religions in the Army.

### **Reply to Article 9.**

#### **Section 144.**

The Advisory Committee *finds* that there is a lack of clarity in certain language requirements contained in the Broadcasting Law of Serbia and *considers* that the authorities should more clearly exclude the application of undue language quota on minority language programming.

The Broadcasting Law of the Republic of Serbia entered into force on 27 July 2002. The Law regulates the terms and conditions for performing broadcasting activity in the Republic of Serbia. Bearing in mind the importance of the broadcasting activity to the implementation of Article 9 of the Framework Convention, the Law laid down in a range of its provisions the obligations related to respecting the rights of national minorities in that field. The obligations apply to the **agencies serving as public broadcasting services**. Under Article 78 of the Broadcasting Law, for the purpose of exercising public interest in the field of the public broadcasting service, the agencies serving as public broadcasting services shall be obliged, *inter alia*, to produce and broadcast programming intended for all the segments of society, without discrimination, in doing so particularly bearing in mind the specific social groups such as children and youth, *national minorities*, the handicapped, the socially vulnerable and persons with medical problems, etc. **and to ensure the meeting of the needs of citizens for programming which expresses cultural identities of national minorities by enabling them to follow certain programs or programming units, in those territories where they live and work, also in their mother tongues and scripts. The above obligations are applicable to the agencies serving as public broadcasting services, and not to all broadcasters. The Broadcasting Law in a number of Articles provides for the obligations related to language quotas** for all broadcasters, accordingly for both the agencies serving as public broadcasting services and for private broadcasters. **Article 72, para. 1. of the Broadcasting Law of the Republic of Serbia stipulates that the broadcaster shall be obliged to produce and broadcast programs in the Serbian language, or to secure that programs produced in foreign languages are broadcast translated into the Serbian language.** Under Article 73, para. 1, of the Law, the broadcaster shall be obliged to broadcast at least 50 percent of the program produced in the Serbian language, of which at least 50 percent shall be his own production, out of the total annual amount of broadcasting time. **Article 72, para. 2, of the Broadcasting law sets out that the obligation of producing and broadcasting programs in the Serbian language shall not be applied to broadcasters that produce and broadcast programs intended for national minorities, as well as that it does not apply to parts of the programming of the institutions of the public broadcasting service which meet the needs of national minorities for information in their own languages.** *On the basis of the above legal provision it is clear that the language quotas under no circumstances apply to the programming in minority languages. Consequently, irrespective of whether programs are broadcast by private broadcasters or the programs in minority languages are broadcast by the institutions of the*

*public broadcasting service, the provisions of the Law governing language quotas do not apply to them. The presented legal arrangement is fully enacted in practice, with all-day programs in minority languages broadcast by some performers of broadcasting activity (radio or television), being a telling indication of that.*

**Taking into account that the above mentioned legal arrangement clearly excludes the application of language quotas to broadcasting of programming in minority languages and that it is fully implemented in practice, the authorities of Serbia and Montenegro are of the opinion that Conclusions and Recommendations of the Committee of Ministers should not contain statements regarding quotas on minority language programming.**

#### **Section 145**

**The Advisory Committee *finds* that the legislation of Montenegro on minority languages programmes is of a rather general nature and *considers* that more detailed guarantees for the implementation of Article 9 of the Framework Convention should be introduced.**

Being of the opinion that a pluralist democratic society should respect ethnic, cultural, linguistic and religious dignity and rights of persons belonging to national and ethnic groups, the new media legislation in the Republic of Montenegro ensures appropriate conditions enabling national and ethnic groups to express, preserve and develop their identity and exercise rights guaranteed by the Constitution, which pertain to them. The Council of Europe has also given its opinion on the media legislation in Montenegro, in written comments on the Draft Law on Public Broadcasting Services Radio Montenegro and Television Montenegro, in the texts of 22, 23 and 26 April, in reports under the numbers ATCM (2002)4, ATCM (2002)5 and ATCM (2002)7, which points to the fact that the authorities of Montenegro had fully cooperated with this institution in the drafting of such important laws.

At present, in the Republic of Montenegro the programming in the Albanian language is broadcast by the National Broadcasting Service Radio Montenegro and Television Montenegro (every day for one hour) and local broadcasting services in Bar and Ulcinj on an all-day basis. Among private radio stations, programs in the Albanian language are broadcast by Radio Mir (Peace), TV Teuta, TV Boing and the Teuta Press Agency.

The programming in the Roma language, in cooperation with the Roma Center for Strategy, Development and Democracy, on Radio Montenegro, is broadcast every other Monday at 7:30 p.m. in the duration of half an hour under the name *Voice of the Roma of Montenegro*.

The right to information of national minorities in the Republic of Montenegro, in addition to the broadcasting of radio and television programs, is exercised also through the publishing of the printed media, of which 15-odd are currently registered on programs contained in the Albanian language, as well as two magazines dealing with the topics related to the life of Roma.

#### **Reply to Article 10.**

#### **Section 147.**

**The Advisory Committee *finds* that the present legal situation pertaining to the implementation of Article 10 of the Framework Convention is rather complicated and *considers* that the authorities should review the situation in order to ensure that the pertinent legal obligations have been implemented in all municipalities concerned.**

The legal arrangements through which Article 10 of the Framework Convention is implemented are contained in the Law on the Official Use of Language and Script of the Republic of Serbia and the Law on the Protection of Rights and Freedoms of National Minorities. The provisions of the Law on the Official Use of Language and Script of the Republic of Serbia provide that the language and script of national minorities shall be introduced into official use in those local self-government units which take a decision to that effect. The Law on the Protection of Rights and Freedoms of National Minorities in its Article 11 stipulates that a local self-government unit shall be obliged to introduce into official use on an equal basis the language and script of a national minority if the share of persons belonging to the national minority in the total population in its territory reaches 15 percent according to the results of the most recent census. The Law on the Protection of Rights and Freedoms of National Minorities provides also that a municipality may take a decision on the introduction of a language of a national minority into official use even if the share of persons belonging to the national minority in the total population in its territory is lower than 15 percent according to the results of the most recent census.

The table below presents an overview of official use of languages and scripts in the Republic of Serbia in the context of the results of the most recent population census in the Republic of Serbia in 2002:

<b>Municipality</b>	<b>Minority languages in official use</b>	<b>Share of persons belonging to the national minority in the total number of inhabitants</b>
<b>1. Backa Topola</b>	<b>Hungarian, Ruthenian, Slovak</b>	<b>Hungarians 58.94 percent Ruthenians 0.76 percent Slovaks 0.52 percent</b>
<b>2. Mali Idjos</b>	<b>Hungarian</b>	<b>Hungarians 55.92 percent</b>
<b>3. Subotica</b>	<b>Hungarian and Croatian</b>	<b>Hungarians 38.46 percent Croats 11.24 percent</b>
<b>4. Zitiste</b>	<b>Hungarian and Romanian</b>	<b>Hungarians 19.96 percent Romanians 9 percent</b>
<b>5. Nova Crnja</b>	<b>Hungarian</b>	<b>Hungarians 18.64 percent</b>
<b>6. Novi Becej</b>	<b>Hungarian</b>	<b>Hungarians 19.23 percent</b>
<b>7. Ada</b>	<b>Hungarian</b>	<b>Hungarians 76.64 percent</b>
<b>8. Kanjiza</b>	<b>Hungarian</b>	<b>Hungarians 86.52 percent</b>
<b>9. Novi Knezevac</b>	<b>Hungarian</b>	<b>Hungarians 29.78 percent</b>
<b>10. Senta</b>	<b>Hungarian</b>	<b>Hungarians 80.51 percent</b>
<b>11. Coka</b>	<b>Hungarian</b>	<b>Hungarians 51.57 percent</b>
<b>12. Becej</b>	<b>Hungarian</b>	<b>Hungarians 48.85 percent</b>
<b>13. Srbobran</b>	<b>Hungarian</b>	<b>Hungarians 21.95 percent</b>
<b>14. Temerin</b>	<b>Hungarian</b>	<b>Hungarians 29.50 percent</b>
<b>15. Priboj</b>	<b>-</b>	<b>Bosniacs 18.32 percent</b>
<b>16. Prijepolje</b>	<b>-</b>	<b>Bosniacs 31.82 percent</b>
<b>17. Sjenica</b>	<b>Bosniac</b>	<b>Bosniacs 73.33 percent</b>
<b>18. Tutin</b>	<b>Bosniac</b>	<b>Bosniacs 94.2 percent</b>
<b>19. Novi Pazar</b>	<b>Bosniac</b>	<b>Bosniacs 76.27 percent</b>
<b>20. Bujanovac</b>	<b>Albanian</b>	<b>Albanians 54.69 percent</b>
<b>21. Presevo</b>	<b>Albanian</b>	<b>Albanians 89.10 percent</b>
<b>22. Medvedja</b>	<b>Albanian</b>	<b>Albanians 26.1 percent</b>

23. Zagubica	-	Vlachs 22.04 percent
24. Kucevo	-	Vlachs 27.66 percent
25. Bor	-	Vlachs 18.03 percent
26. Boljevac	-	Vlachs 26.26 percent
27. Dimitrovgrad	Bulgarian	Bulgarians 49.67 percent
28. Bosilegrad	Bulgarian	Bulgarians 70.86 percent
29. Alibunar	Romanian and Slovak	Romanians 26.47 percent Slovaks 8.34 percent
30. Kovacica	Slovak, Hungarian, Romanian	Slovaks 41.07 percent Hungarians 10.52 percent Romanians 6.99 percent
31. Bac	Hungarian and Slovak	Slovaks 19.75 percent Hungarians 6.09 percent
32. Backi Petrovac	Slovak	Slovaks 66.41 percent
33. Backa Palanka	Slovak	Slovaks 9.57 percent
34. Bela Crkva	Hungarian, Romanian, Czech	Hungarians 2.25 percent Romanians 5.4 percent Czechs 3.99 percent
35. Beocin	Slovak	Slovaks 5.96 percent
36. Vrbas	Hungarian and Ruthenian	Hungarians 6.29 percent Ruthenians 8.21 percent
37. Vrsac	Romanian and Hungarian	Romanians 10.87 percent Hungarians 4.18 percent
38. Zabalj	Ruthenian	Ruthenians 5.11 percent
39. Zrenjanin	Hungarian, Romanian and Slovak	Hungarians 10.76 percent Romanians 1.9 percent Slovaks 1.81 percent
40. Kikinda	Hungarian	Hungarians 12.85 percent
41. Kovin	Hungarian Romanian	Hungarians 9.26 percent Romanians 3.71 percent
42. Kula	Ruthenian Hungarian	Ruthenians 11.16 percent Hungarians 8.44 percent
43. Novi Sad (city)	Hungarian Slovak Ruthenian	Hungarians 5.23 percent Slovaks 2.41 percent Ruthenians 0.67 percent
44. Odzaci	Hungarian Slovak	Hungarians 4.41 percent Slovaks 2.81 percent
45. Pancevo	Hungarian Slovak	Hungarians 3.17 percent Slovaks 1.24 percent
46. Plandiste	Hungarian Slovak Romanian	Hungarians 12.10 percent Slovaks 5.41 percent Romanians 7.21 percent
47. Secanj	Hungarian Romanian	Hungarians 12.63 percent Romanians 3.72 percent
48. Sombor	Hungarian	Hungarians 12.73 percent
49. Sremska Mitrovica	Croatian	Croats 2.96 percent
50. Stara Pazova	Slovak	Slovaks 8.86 percent
51. Titel	Hungarian	Hungarians 5.29 percent

52. Sid	Slovak Ruthenian	Slovaks 6.46 percent Ruthenians 3.38 percent
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After a careful review of the above table, one can arrive at the conclusion that minority languages are in official use in 46 out of 161 municipalities in the Republic of Serbia excluding Kosovo and Metohija. The minority languages which are in official use in the Republic of Serbia are Hungarian, Slovak, Romanian, Ruthenian, Albanian, Bosniac, Bulgarian, Croatian and Czech. ***In the stated municipalities the minority languages which are in official use are used not only in procedures before administrative authorities, but may be used also in the proceedings before courts, so that entire administrative procedures or court proceedings are conducted in those languages.*** Furthermore, the provision of Article 16 of the Law on the General Administrative Procedure provides that the administrative procedure conducted by any administrative body shall be conducted in a minority language in the territory where, in keeping with the law, the language of the national minority is in official use.

The municipalities where minority languages have not yet been introduced into official use are four municipalities where Vlachs account for more than 15 percent of the total number of inhabitants (Zagubica, Kucevo, Bor and Boljevac) and two municipalities where Bosniacs account for more than 15 percent of the population and where the Bosniac language has not yet been introduced into official use (Priboj and Prijepolje). The fact that another language in addition to Serbian has not yet been introduced in official use in the municipalities where Vlachs account for more than 15 percent of the population is a consequence of the lack of standardization of the language spoken by part of the Vlach population. In the Republic of Montenegro, pursuant to the Constitution, the languages of national minorities may be in official use in those local self-government units where persons belonging to minorities account for the majority or a sizeable share of the population, which has been put into practice in the municipality of Ulcinj.

**Bearing in mind the above data, one can conclude that very liberal legal arrangements regarding official use of languages and scripts of national minorities are fully implemented in practice.**

### **Reply to Article 11.**

#### **Section 148**

**The Advisory Committee finds that there is a need to provide further guarantees and legal clarity as regards the implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities in Montenegro and considers that this should be tackled in the forthcoming law on the protection of national minorities.**

In addition to the Constitution of the Republic of Montenegro, the exercise of the right of persons belonging to national minorities to the use of their language and script in contacts with administrative authorities is provided for also in the new Law on the General Administrative Procedure which was adopted in the first quarter of 2004. Article 15 of that Law stipulates that the administrative authorities in those municipalities where the majority or a sizeable share of the population are persons belonging to national minorities shall utilize in official use also the language and script of national minorities in conformity with the Constitution and separate law. A preliminary draft of the law on the exercise of rights of national minorities sets forth a numerical criterion for the exercise of the right to official use of language and script in the Republic of Montenegro.

**Section 149.**

**The Advisory Committee *finds* that the right of persons belonging to national minorities to use their language and script in private and in public is not fully reflected in all provisions of the Law on the Official Use of Language and Script of Serbia and *considers* that the authorities should ensure the law's compatibility with Article 11 of the Framework Convention.**

The Advisory Committee bases its finding on the interpretation of Article 20 of the Law on the Official Use of Language and Script presented in section 81 of the Opinion of the Advisory Committee. The Advisory Committee analyzed the provision of the Law which stipulates that the annotation of an enterprise may be written in the Serbian language and the minority language which is in official use in the location of the seat or business and concluded that such provision of the Law is not compatible with Article 11 of the Framework Convention because it is “too restrictive in so far as it may be interpreted as preventing persons belonging to a national minority from displaying certain information of a private nature visible to the public also in a minority language that is not in official use. Bearing in mind that the expression "of a private nature" in Article 11 of the Framework Convention refers to all that is not official, the Advisory Committee is of the opinion that Serbia should revise the said provision with a view to ensuring its compatibility with Article 11 of the Framework Convention.”

The authorities of Serbia and Montenegro fully share the opinion of the Advisory Committee, but **are of the opinion that the finding of the Advisory Committee is not complete.** Namely, Article 20, para. 3, of the Law on the Official Use of Language and Script of the Republic of Serbia contains also a **provision specifying that a firm, i.e. a shop, shall not be obliged to write its name or part of it which is used as a trade mark in the Serbian language or the language of the national minority which is in official use, irrespective of the linguistic origin of the said inscription.** *The authorities interpret the above provision as legal grounds providing for the possibility to display in public information of a private nature in all languages, and thus in minority languages, which are not in official use.* The practice fully corroborates the above interpretation – in inhabited places in Serbia and Montenegro names of the firms or shops are written in all the languages, i.e. they written in the same manner in which the firms or shops were officially registered. Bearing in mind the above the authorities of Serbia and Montenegro are of the opinion that Conclusions and Recommendations of the Committee of Ministers should not contain statements regarding the necessity of making the Law on the Official Use of Language and Script of the Republic of Serbia compatible with Article 11 of the Framework Convention for the Protection of National Minorities.

**Section 151.**

**The Advisory Committee *finds* that additional efforts are needed in practice to implement the guarantees concerning display of topographical indications.**

The authorities of the Republic of Montenegro are aware of the need for the general provision in the Constitution to be specified through legal arrangements and they point to the fact that the new law on the exercise of rights of national minorities, which is on public debate, will more clearly settle this issue.

**Reply to Article 12.****Section 154.**

**The Advisory Committee finds that, in Serbia, Roma children are frequently placed in the so-called "special schools" designed for children with mental disabilities, on the basis of tests that do not take into account the needs and culture of Roma. The Advisory Committee finds that the resulting situation is not compatible with Article 12, paragraph 3, of the Framework Convention and considers that the authorities should pursue as a matter of high priority their plans to address this issue.**

The authorities of Serbia and Montenegro are fully aware of the finding of the Advisory Committee regarding the problem of placement of Roma children in the so-called "special schools." In Serbia and Montenegro there is no mandatory keeping of records of pupils according to their ethnicity. In that respect, there are no reliable data on the number of Roma in "special schools." According to the estimates presented in UNICEF's analysis (*A Comprehensive Analysis of the Elementary Education System in FR Yugoslavia – Belgrade 2001*), which is used also by the Ministry of Education and Sports of the Republic of Serbia, Roma account for 50 to 80 percent of the total number of pupils in "special schools". These are schools and classes for mentally handicapped children, i.e. for children with special needs. The assessment is that the main reason for the large number of Roma in such schools are tests children are taking before enrolment in school. Those are verbal tests which are not adjusted to special needs of Roma, socio-cultural specificities and their language skills. That is where the assessment is coming from of psychologists and pedagogues who categorize children for the purposes of enrolment in elementary schools that Roma belong to the group of children with special need. A plan of the Ministry of Education and Sports of the Republic of Serbia envisages the development of a new enrolment policy. Bearing in mind the need for the development of a new enrolment policy, a special working group has been set up at the Faculty of Philosophy in Belgrade, entrusted with a task of reviewing the enrolment test used so far and to propose to the Ministry of Education and Sports of the Republic of Serbia measures for changing the enrolment policy. The working group submitted to the Ministry of Education of the Republic of Serbia its Report on 15 March 2004. The report recommends that children of Roma ethnicity be unconditionally, meaning irrespective of the results of the tests, enrolled in regular elementary schools. The working group recommended following up for a certain period of time (two or three years) on academic achievement of the children of Roma ethnicity and to compare their academic achievement with the results of the tests, in order define criteria on the bases of which adequate sets of tests could be developed.

### **Section 155.**

**The Advisory Committee finds that in some municipalities specific classes have been established for Roma and considers that the authorities should pursue their efforts in this sphere with a view to enabling and encouraging Roma children to stay in the regular classes.**

According to the data of the Ministry of Human and Minority Rights of Serbia and Montenegro, special classes with only Roma children exist in some schools in the Republic of Serbia, *but they were never formed on the basis of a specific decision of the competent educational authorities.* In Nis, in the elementary school *Vuk Karadzic*, according to the estimates of the school administration, most of the pupils are of Roma ethnicity. In the school year 2003/2004 only two non-Roma pupils were enrolled in the school, while 16 pupils of Serbian ethnicity left the school. The basic reason for which there is such a large number of Roma pupils in that school, i.e. classes attended exclusively by Roma children, is the immediate vicinity of a large Roma settlement. The school has gradually, through a process of natural segregation, become a school with an overwhelming majority of Roma pupils. The school administration has noticed that

parallel to the increase in the number of Roma pupils parents of Serbian ethnicity are becoming reluctant to enroll their children in the said school, i.e. they are withdrawing them from that school. In the light of the above, and bearing in mind that parents have the right to choose a school that their children will attend, the school administration acted and took measures with a view to increasing the interest for enrolment in the school, thus curbing the effects of the process of natural segregation. In the elementary school *Branko Radicevic* in Bujanovac there is one class in the second grade attended exclusively by pupils of Roma ethnicity. It is a class formed from pupils who enrolled late. One needs to stress that the school is multiethnic, i.e. that the average number of Roma pupils in other classes ranges between 13 and 15 and they attend the said school together with Serbian and Albanian children. The school administration is aware of the fact that the above mentioned class is a mono-ethnic class and they have consulted the parents who agreed that children stay, for the time being, in the class where they were enrolled. The Ministry of Human and Minority Rights of Serbia and Montenegro is in contact with the administration of that school.

**Section 156.**

**The Advisory Committee *finds* that low school attendance and high drop-out rates are a problem amongst Roma children, and it *considers* that the draft strategy for the Integration and Empowerment of Roma contains a number of initiatives that could significantly improve the situation.**

The authorities of Serbia and Montenegro point to the fact that the initiatives aimed at improving the situation related to low school attendance and high drop-out rates among Roma children are provided for also by the Poverty Reduction Strategy Paper of the Republic of Montenegro, which separately deals with an education concept and which envisages reform in the educational system. The Strategy envisions that the construction of the facilities in places with high concentrations of Roma will enable their inclusion in pre-school programs, which will be an important prerequisite for their further inclusion in elementary education. The activities in the Republic of Montenegro will be carried out by increasing the participation of Roma in the elementary education programs at a rate of 0.5 percent a year, thus increasing the number of Roma in the total number of elementary school pupils to 3 percent.

As for Montenegro, in accordance with the guidelines from the Framework Convention, the Ministry of Education and Science of the Republic of Montenegro, in addition to the activities pursued in relation to enabling training of persons belonging to the Roma national minority for work in schools (bearing in mind that at present there are only 7 Roma at the University of Montenegro), in the spirit of cherishing intercultural understanding and within a reformed system, has opened a possibility for fostering language and culture within a framework of the new format of curricula. Namely, 80 percent of the curriculum is defined at the central level, by the National Curriculum Council (an expert body of the Government), while 5 percent of the curriculum is opened to be defined by schools, and 15 percent is opened as a basis for expressing characteristics of local communities. In addition to that, for the first time in Montenegro, the curriculum for elementary schools defines the introduction of the subject "Civil Education" as a mandatory subject, with the main objective to foster dialogue among cultures and develop the spirit of coexistence with differences. The Montenegrin Ministry of Education and Science considers that it will additionally encourage full integration of all children, including Roma, in this manner. It is envisaged to enroll in this year's campaign around 120 children from the territory of Podgorica in the first grade of elementary school, while at the level of the Republic the plan is to enroll 266 Roma children. The campaign for including Roma

children in the formal education system is carried out in the territories of 14 Montenegrin municipalities with financial support from the Government of the Republic of Montenegro.

**Section 157.**

**The Advisory Committee *finds* that the non-recognition and delays in the recognition of certain diplomas from educational institutions abroad and from Kosovo has been controversial, and it *considers* that the authorities should seek legitimate and balanced solutions to these issues.**

The authorities of Serbia and Montenegro point to the fact that diplomas acquired in a school in the territory of Kosovo and Metohija are not subject to official recognition because the territory of Kosovo and Metohija is an integral part of the Republic of Serbia and thus an integral part of Serbia and Montenegro. Since the Province has been placed under the control of international forces in 1999, the authorities of Serbia and Montenegro maintain that all the diplomas acquired in the schools from the territory of the Province, verified by the UNMIK administration and issued on bilingual forms, are valid in the Republic of Serbia, without the need for a special validation procedure.

The solutions regarding validation of diplomas acquired abroad are fully balanced and set out in the Law on Elementary Schools, the Law on Secondary Schools, the Law on Post-Secondary Schools and the Law on University. Diplomas of elementary and secondary schools acquired abroad are subject to validation in the Ministries of Education, while the validation of diplomas acquired in foreign post-secondary schools and universities is carried out in a procedure before committees comprising university professors and professors of post-secondary schools. In Serbia and Montenegro there were no cases of delays or non-recognitions of diplomas issued by foreign countries, which correspond to the educational level whose recognition is requested, i.e. which are harmonized with domestic diplomas. With respect to the recognition of diplomas acquired in Albania and the countries in the region, one needs to point to the fact that the Republic of Montenegro set up a Committee for Assessing the Degree of Similarity between Educational Systems in Secondary and Higher Education last month. The Committee will draft a proposal for bilateral solutions which will define the recognition of diplomas and qualifications. The Committee is supposed to carry out these tasks within 90 days after the day of its establishment.

**Reply to Article 13**

**Section 158**

**The Advisory Committee *finds* that the right of persons belonging to national minorities to establish private educational institutions, schools and universities should be better reflected in the Law on Elementary Schools of the Republic of Serbia and *considers* that the authorities should take more proactive measures to analyse the level of demand and review the situation with a view to ensuring that the domestic legislation pertaining to the teaching in or of minority languages is fully implemented.**

**The Charter on Human and Minority Rights and Civil Freedoms of the state union of Serbia and Montenegro** envisages in its Article 43 that everyone is entitled to education, *that elementary education is compulsory and that the member states are obliged to ensure free elementary education*. The provisions of the Constitution of the member states are also in accordance with the mentioned provision of the Charter on Human and Minority Rights and Civil Freedoms. **The Constitution of the Republic of Serbia** envisages in Article 32 that

*elementary education is compulsory and that citizens should not pay tuition fees for regular schooling financed from the public revenue. The Constitution of the Republic of Montenegro envisages in Article 62 that everyone is entitled to education under equal conditions, that elementary education is compulsory and that tuition fees should not be paid for it.* The member states regulated the field of education by special laws, under their respective constitutions. The Law on Elementary Schools of the Republic of Serbia (Article 9) lays down that elementary schools should be established by the Government of the Republic of Serbia, while the Law on Elementary Schools of the Republic of Montenegro stipulates that elementary schools should be established as public institutions, i.e. that they should be established by the state (Article 17). The mentioned provision excludes the possibility of founding private general elementary schools, while the setting up of private music and ballet elementary schools remains possible. The foundation of other private schools in Serbia and Montenegro is, of course, also possible.

The governments of Serbia and Montenegro are of the opinion that Article 13 of the Framework Convention stipulates the obligation on the part of the contracting parties to acknowledge the right of members of national minorities to establishing and managing private educational institutions **within the educational system**, without excluding limitations regarding the right to establishing and managing private educational institutions **arising from the educational system**. The governments of Serbia and Montenegro base their position, among other things, on the Comments on the Framework Convention, pointing out that the obligation of the contracting parties to recognize the right of members of national minorities to establishing and managing their own private educational institutions, is subject to the terms of their respective educational systems, **especially to the regulations on compulsory education. The mentioned provisions of the Law on Elementary Schools of the Republic of Serbia and the Law on Elementary Schools of the Republic of Montenegro, excluding the possibility to establish private general elementary schools, stem from the educational system, i.e. from the constitutional provisions imposing the obligation upon the states members of the state union to ensure a system of elementary education which would be free for all. The governments of Serbia and Montenegro are of the opinion that the essence and the purpose of the Framework Convention are observed to a greater extent if the entire elementary education of members of national minorities in their own language is available in elementary schools, whose attendance is compulsory and free, rather than if private elementary schools are established, as a result of which a certain number of students may end up leaving elementary schools, due to the risks pertaining to financial operations and the payment of tuition fees.**

#### **Reply to Article 14** **Section 159**

**The Advisory Committee *finds* that there are gaps in some areas in terms of the provision of teaching in or of certain minority languages and *considers* that the authorities should take more proactive measures to analyse the level of demand and review the situation with a view to ensuring that the domestic legislation pertaining to the teaching in or of minority languages is fully implemented.**

The Advisory Committee bases its findings on the requests concerning education in minority languages, expressed by organizations “representing” certain national minorities, primarily the Vlach minority in the north-eastern Serbia. The governments of Serbia and Montenegro point to the fact that under the provisions of the Law on the Protection of Rights and Freedoms of National Minorities, national councils represent national minorities as groups in the field of

education, while the Law on Elementary and Secondary Schools of the Republic of Serbia clearly defines the criteria for instruction in minority languages. The Law on the Protection of Rights and Freedoms of National Minorities lays down in its Article 13, paragraph 1, that members of national minorities have the right to education in their own language in the institutions of pre-school, elementary and secondary education. Article 13, paragraph 2, of the Law on the Protection of Rights and Freedoms of National Minorities defines that the state is obliged to create conditions for organizing education in the languages of national minorities within the public educational system, i.e. that it is obliged to ensure bilingual instruction or the studying of the languages of national minorities, including the elements of national history and culture. The mentioned provisions of the Law on the Protection of Rights and Freedoms of National Minorities envisage three forms of instruction for members of national minorities – instruction entirely organized in minority languages, bilingual instruction or the studying of the mother tongue, including the elements of national culture. As regards the instruction entirely organized in minority languages, the Law on the Protection of Rights and Freedoms of National Minorities stipulates that a minimum number of students may be prescribed for such instruction, and that the number cannot be smaller than the minimum number of students necessary for ensuring adequate forms of instruction and education as envisaged by law. Under the Law on Elementary Schools of the Republic of Serbia, instruction in minority languages and bilingual instruction are organized in the areas where there are at least 15 students enrolled in the first grade. Under the provision of Article 15, paragraph 2 of the same Law, instruction can also be organized for a smaller number of students as approved by the minister of education. The Law on Secondary Schools of the Republic of Serbia contains analogous provisions. *In connection with the mentioned provisions, the governments of Serbia and Montenegro indicate that during the school year 2003/2004 there were no requests submitted to the Ministry of Education for assistance in developing curricula for instruction in minority languages either by schools or representatives of national minorities.* The government of the Republic of Serbia is prepared to consider carefully and adopt any request submitted provided that there are legal bases for it.

### **Reply to Section 162**

**The Advisory Committee *finds* that in Montenegro the legal situation concerning minority language teaching is less developed and it *considers* that there is a need to provide further guarantees and greater legal clarity in this sphere.**

Some unclear points which existed in the Law on Elementary Schools and the Law on Secondary Schools of the Republic of Montenegro regarding instruction in minority languages were addressed in the new legal provisions. In 2003 new legal provisions were adopted envisaging that instruction in minority languages should be organized in schools or classes in local self-government units in which members of national minorities constitute the majority. Additional guarantees in this field will be stipulated by the new Law on the Implementation of National Minority Rights.

### **Section 163**

**The Advisory Committee *finds* that many displaced and repatriated Roma have reportedly faced particular problems as they have been placed in the Serbian language schools without adequate support and without due regard to their linguistic backgrounds needs. The Advisory Committee *considers* that the authorities should ensure that these persons are provided adequate opportunities to receive education in their language.**

In connection with the right to education of internally displaced persons and returnees from the countries of Western Europe, legal provisions in the Republic of Serbia envisage the obligation of organizing remedial (additional) instruction for all subjects where such a need exists. The Law on Elementary Education of the Republic of Serbia envisages in its Article 25 the possibility of organizing preparatory classes for pre-school children in order to master the Serbian language. Furthermore, the Law on the Fundamentals of the Educational System stipulates in Article 72 the possibility for schools to envisage 10% of the curriculum on their own, in accordance with their specific needs. The mentioned legal provisions will serve as a legal framework for future actions of the government when it comes to extending the needed assistance to internally displaced persons and returnees from the countries of Western Europe.

### **Reply to Article 15**

#### **Section 164**

**The Advisory Committee *finds* that there is scope for further improvements in a number of municipalities in terms of representation of national minorities in elected bodies and that, regards the Parliament of Serbia, representatives of national minorities are concerned that the 5 percent threshold contained in electoral legislation is an obstacle to further progress in this sphere. The Advisory Committee *considers* that the authorities should address the issue of electoral legislation as a matter of priority, bearing in mind the impending parliamentary elections in Serbia.**

The governments of Serbia and Montenegro clearly stated in their State Report that the electoral threshold of 5% contained in the Law on the Election National Deputies is an obstacle to further progress in the effective participation of national minorities in the public life. The Law on Amendments to the Law on the Election of National Deputies adopted on 25 February 2004 in the Republic of Serbia, after the December 2003 elections, stipulates the provision under which the electoral threshold of 5% is abolished for political parties of national minorities or any coalitions thereof. Thus in the Republic of Serbia as well (the Republic of Montenegro envisages elements of affirmative action in favour of members of the Albanian minority in its electoral laws) the participation of members of national minorities in the legislative branch of power is facilitated.

#### **Section 165**

**The Advisory Committee *finds* that one particularly acute problem is the representation of national minorities in law-enforcement bodies and in the judiciary and considers that the authorities should take additional measures to ensure a better representation of national minorities in these fields.**

The governments of Serbia and Montenegro devote particular attention to the issue of the representation of national minorities in the executive branch of power, although there are no constitutional provisions envisaging obligatory participation in these authorities. The fact that in the six-member Council of Ministers of the state union of Serbia and Montenegro, there are two ministers belonging to the Bosniac national minority (the Ministry of Human and Minority Rights and the Ministry of Internal Economic Relations) testifies to this approach. In the Government of Montenegro one vice-president and two ministers are members of national minorities. It is especially important to stress that the ministers responsible for human and minority rights at the state union level and in the Republic of Montenegro are members of national minorities. In the Autonomous Province of Vojvodina, the provincial secretaries for

administration, regulations and national minorities, as well as the secretaries for education and information are members of national minorities.

### **Section 166**

**The Advisory Committee *finds* that persons belonging to national minorities report significant differences in the level of their access to the decision-making process of various government structures and *considers* it essential to ensure that persons belonging to national minorities are increasingly involved also in the pertinent activities of the authorities of the constituent states and that the authorities examine whether a coordination function for minority issues could be usefully introduced within Serbia's governmental structures.**

Upon the establishment of the new government of the Republic of Serbia, representatives of the Ministry of Human and Minority Rights of the state union had consultations with representatives of the Government of the Republic of Serbia and reached an agreement in principle that a special department should be set up within the Prime Minister's Office to coordinate affairs in the fields significant for national minorities.

### **Section 167**

**The Advisory Committee *finds* that the exact role and scope of the activities of the National Councils of national minorities is yet to be determined and considers that the authorities should address the delays in the setting-up of the "Federal " Council for National Minorities and address the issue of funding of National Council as a matter of priority.**

The role and the scope of activities of national councils of national minorities are established by the Law on the Protection of Rights and Freedoms of National Minorities. Under the provisions of this Law, national councils are advisory and representative bodies in the areas of education, culture, information and the official use of languages and scripts. Furthermore, under its provisions, a part of public-law authority may be transferred to national councils, which has already been done in some areas of social life – education (competence to propose subjects important for national minorities) and the official use of languages and scripts (public-law competence to determine traditional names of settled areas in the mother tongues of national minorities for official use). The role of national councils has clearly been established by the existing legal provisions and the practical measures undertaken. Representatives of national councils have required on a number of occasions that *a wider scope of public-law authority should be transferred from the state to councils*. Within the Ministry of Human and Minority Rights a special working group has been established to consider the mentioned issue and to propose adequate solutions bearing in mind the past activities of councils and their material and personnel potentials.

The National Minority Council envisaged by the Law on the Protection of National Minorities has not been set up yet for the establishment of national councils has still not been completed. **The governments of Serbia and Montenegro find that the establishment of the Council is an issue of great significance and are committed to ensuring that no minority should be deprived of the possibility to participate in the decision-making process in the purview of the Council. In that connection, the governments of Serbia and Montenegro should like to remind of the fact that the national councils of the Albanian, Vlach and Macedonian**

**national minorities, as well as the councils of small national minorities, like the Greek, Goranians, Turkish, German and Check minorities, have not been founded yet.**

The Ministry of Human and Minority Rights will invite special tenders for financing the projects of national councils, as well as for promoting cultural, artistic and linguistic creativity of the national minorities represented by the councils. Apart from being financed by the state union, national councils will also be financed by the Republic of Serbia (resources allocated from the current budget reserves), by the Autonomous Province of Vojvodina (5 million dinars), as well as from the budget of a number of local self-government units where members of national minorities live.

### **Section 168**

**The Advisory Committee *finds* that, in Montenegro, the impact of the Republic Council for the Protection of Rights of Members of National and Ethnic Groups has been largely questioned amongst national minorities, and it considers that the authorities should introduce improved mechanisms for involving persons belonging to national minorities in decision-making affecting them.**

The scope of work of the Council for the Protection of Members of National and Ethnic Minorities is defined by the provisions of the Constitution of the Republic of Montenegro. The Council was established based on the constitutional provisions and unanimous consensus, at the time when relevant political parties in Montenegro were being formed, in order to alleviate inter-ethnic tensions through its work as well as to avoid the danger of the spillover of inter-ethnic conflicts from the neighbouring countries. The Council was conceived as a super-party body expected to carry out, through the authority of its members and generally, the principles regarding the implementation of rights and freedoms of all citizens, within which the equality of national minorities is the fundamental postulate of democracy in the Republic of Montenegro.

A part of the critical remarks on the work of the Council addressed to the Advisory Committee by NGOs and other independent sources has largely to do with conceptual limitations of this body which was defined as advisory and which cannot act in another way in the system of the separation of powers. Since its establishment the Council has considered a number of issues important for the protection and promotion of rights of members of national minorities. The following are the most important ones:

- political and constitutional and legal aspects of the status of members of national and ethnic groups;
- basic issues regarding the implementation and protection of the right to education of members of national minorities;
- review of the bill on the use of national symbols and its subsequent adoption by the Assembly of the Republic of Montenegro;
- results in the education of members of national minorities;
- position of national minorities in the light of the local self-government reform;
- theses for a law on the implementation of national minority rights.

**Section 169**

**The Advisory Committee *finds* that the protection of national minorities would benefit from further development of the authorities' approach to decentralization and *considers* that this should also be reflected in the context of the pending constitutional reforms.**

The governments of Serbia and Montenegro are of the opinion that the process of decentralization in Serbia and Montenegro started after the democratic changes in 2000 and that many laws have been adopted in that context. The most significant one is undoubtedly the Law on Local Self-Government of the Republic of Serbia of 2002, increasing the competences of local self-governments in the areas of social policy, health, education, town planning, construction, etc. The Law on the Fundamentals of the Educational System of the Republic of Serbia of 2003 lays down, *inter alia*, that local communities may participate in drawing up a considerable portion of the curriculum and programmes reflecting the needs and interests of the community. The process of decentralization was largely promoted by adopting the so-called Omnibus Law under which a number of new competences in numerous areas of social life were transferred to the Autonomous Province of Vojvodina (education, culture, information). Judging by the positions of political parties, both the ruling ones and those in opposition, it is to be expected that the forthcoming constitutional reforms will offer an opportunity to institutionalize new elements of the decentralization process, with greater competences of local self-governments.