

# **ECRI REPORT ON MONTENEGRO**

**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 22 June 2011 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Montenegro has taken a number of positive steps towards combating racism and intolerance. These include the following.**

Since its independence in June 2006, Montenegro has ratified the vast majority of relevant international legal instruments of concern to ECRI, including Protocol No. 12 to the European Convention on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Additional Protocol to the Convention on Cybercrime. Comprehensive protection of national/ethnic minorities is enshrined in the Constitution and the Law on Minority Rights and Freedoms.

A Law on the Prohibition of Discrimination has been adopted establishing the Protector of Human Rights and Freedoms as the anti-discrimination body with competence in both the public and the private sphere.

The Strategy for the improvement of the position of the Roma, Ashkali and Egyptian (RAE) population in Montenegro 2008-12 was adopted in 2007 to address the appalling socio-economic situation of this population group. It sets out concrete actions in eight priority areas, including education, employment, healthcare and housing. In education, Roma assistants have been employed to assist RAE children and scholarships have been granted to RAE pupils for secondary school and university studies.

The Council for Civil Control of Police Work was set up as an independent oversight mechanism to investigate complaints against the police.

**ECRI welcomes these positive developments in Montenegro. However, some issues give rise to concern.**

The legal status of “displaced” and “internally displaced” persons from Bosnia and Herzegovina, Croatia and Kosovo<sup>1</sup> has not been resolved. The procedure established to address this issue (by application for the status of foreigner with permanent residence) is complex and many people will not be able to meet the requirements. Some people risk de facto statelessness. Non-citizens, including “displaced” and “internally displaced” persons cannot vote or stand for local elections. Their possibility to apply for Montenegrin citizenship is restricted.

Roma, Ashkali and Egyptian (RAE) children suffer discrimination in access to education and in the school environment. The Konik camp constitutes de facto segregation and living conditions there are inhuman and hazardous. RAE face obstacles in access to employment, even when they are academically or professionally qualified.

There is no systematic collection of disaggregated ethnic data, no authentic representation of national/ethnic minorities in Parliament and proportionate representation in public services, state bodies and local self-government has not been achieved.

Asylum seekers have no right to appeal to a court against negative decisions, and have no access to the labour market.

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this report shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

**In this report, ECRI requests that the Montenegrin authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The authorities should take all possible steps to facilitate the procedure for “displaced” and “internally displaced” persons to obtain the status of foreigner with permanent residence. Roma, Ashkali and Egyptians (RAE) who have no personal documents should not automatically be excluded. Possibilities should be opened for non-citizens to be granted the right to vote and stand for local elections.

The initial and in-service training for police, lawyers, public prosecutors and judges on issues related to equal treatment and non-discrimination, the criminal law provisions in force against racism and racial discrimination and on how to recognise the racist motivation of an offence should be strengthened\*.

RAE children’s attendance at pre-school should be increased to enable them to learn Montenegrin before entering elementary school. Standard accommodation around the town or country should be found for the RAE inhabitants of Konik and the camp should be closed down\*. The employment of RAE should be actively encouraged through tax incentives and subsidies for employers who hire RAE workers. The issuing of personal documents should be intensified.

Asylum seekers should be able to appeal against decisions before an independent and impartial court or tribunal. The building of a reception centre should be completed as soon as possible with all necessary facilities and staff. Asylum seekers should not automatically be excluded from the possibility of employment regardless of their length of stay in the country.

A monitoring system should be established to enable the collection of relevant information broken down according to categories such as national/ethnic origin, language, religion and citizenship, in different areas of policy.

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\* The recommendation in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of the report.



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Application of Legal Provisions

#### International legal instruments

1. Following its independence on 3 June 2006, Montenegro has become party to the vast majority of international legal instruments of concern to ECRI: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Protocol No. 12 to the ECHR; the European Social Charter (revised); the Framework Convention for the Protection of National Minorities; the European Charter for Regional or Minority Languages; the European Convention on Nationality<sup>1</sup>; the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems; the International Convention on the Elimination of All Forms of Racial Discrimination (it has also made the declaration under Article 14 of the Convention, recognising the competence of the Committee on the Elimination of Racial Discrimination to receive and examine complaints by individuals or groups of individuals); the Convention (1951) and Protocol (1967) relating to the Status of Refugees; and the UNESCO Convention against Discrimination in Education.
2. Montenegro signed the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families on 23 October 2006, but has not yet ratified it. The authorities have informed ECRI that the process of ratification has started and the Ministry of Labour is preparing the relevant text. ECRI encourages the authorities to complete the ratification of this convention in order to protect labour migrants and other immigrants, the majority of whom originate from other countries within the Western Balkans region, from exploitation and xenophobia.
3. As for the Convention on the Participation of Foreigners in Public Life at Local Level, Montenegro has neither signed nor ratified it and there are no plans to do so. This is because, according to Article 45 of the Constitution, only “citizens with at least two years’ residence in Montenegro” can vote or stand for elections<sup>2</sup>. For the reasons specified below (see section on Electoral rights), ECRI considers this provision to be unreasonably restrictive. If Montenegro intends to integrate the “displaced” and “internally displaced” persons who wish to remain in the country, it should take the necessary steps to become party to the Convention on the Participation of Foreigners in Public Life at Local Level.
4. ECRI recommends that Montenegro completes ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level.

#### Constitutional and other fundamental provisions

5. On 19 October 2007, Montenegro adopted a new Constitution, which came into effect on 22 October 2007. Article 7 prohibits the infliction or encouragement of hatred or intolerance on any grounds. Article 8 prohibits direct or indirect discrimination on any grounds. It also permits special measures to be taken in the interests of equality of persons on any grounds until the achievement of the aims

<sup>1</sup> See section below on Citizenship.

<sup>2</sup> Concerns have been raised about this from the point of view of universal suffrage in the European Commission’s Analytical Report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Montenegro’s application for membership of the European Union, Brussels, 9 November 2010.

for which they were taken. Article 17 states that everyone shall be deemed equal before the law, regardless of any particularity or personal feature. While ECRI welcomes these general provisions relating to equality and non-discrimination, it regrets the omission of a non-exhaustive list of grounds, such as contained in Article 1 of Protocol No. 12 to the ECHR. A specific reference in the Constitution to race, colour, language, religion, national or social origin, or association with a national minority would have indicated the importance given to combating racism<sup>3</sup> and racial discrimination<sup>4</sup>.

- *Electoral rights*

6. As mentioned above, Article 45 of the Constitution restricts voting in and standing for elections to citizens with at least two years' residence in Montenegro. ECRI notes that Montenegro has significant numbers of "displaced" and "internally displaced" persons who fled from conflicts in Bosnia and Herzegovina, Croatia and Kosovo in the 1990s. The majority of these people have already resided in Montenegro for many years, some even decades, and contributed to the life of the local community. However, they are denied the right to participate in the local decision-making process on matters which affect them.
7. In addition, according to the Government's 2009 Action Plan for resolving the status of displaced persons from the former Yugoslav Republics and internally displaced persons from Kosovo residing in Montenegro<sup>5</sup>, those persons who manage to obtain the status of "foreigner with permanent residence" will still not have any electoral rights, although they will be granted all the other rights of Montenegrin citizens. ECRI considers that the approach a country takes to issues of integration of non-citizens, including political integration, reflects how welcoming, and ultimately tolerant, it is.
8. ECRI is concerned that a sizeable group of long-term residents are, and will continue to be, barred from the possibility of exercising political rights at local authority level. It considers that the Constitution should be amended to provide this possibility. Guidance on the political integration of non-citizens at local level is provided by the European Convention on the Participation of Foreigners in Public Life at Local Level, the ratification of which ECRI has recommended above.
9. ECRI recommends that the authorities amend Article 45 of the Constitution to open possibilities for non-citizens to vote in and stand for local elections.

- *Citizenship*

10. The Law on Citizenship of March 2008 is restrictive on the question of dual nationality. It does not allow the acquisition of Montenegrin citizenship by naturalisation unless the applicant renounces citizenship of another State. For this reason, upon ratification of the European Convention on Nationality, Montenegro reserved the right not to apply Article 16, which provides that a State party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required. In July 2010 the Parliament of Montenegro adopted the Law on Amendments and Addenda to the 2008 Law on

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<sup>3</sup> According to General Policy Recommendation No. 7, racism is the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

<sup>4</sup> According to General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>5</sup> See section below on Vulnerable Groups – "Displaced" and "internally displaced" persons.

Citizenship. ECRI notes that the new law facilitates the naturalisation of citizens of Yugoslavia's successor states who settled in Montenegro, by allowing them to renounce the citizenship of their State of origin through a written statement. This will particularly benefit those who could not obtain release from their original citizenship due to compulsory military service.

11. Under the Law on Citizenship, ten years of legal and uninterrupted residence is required for naturalisation. ECRI notes that, according to the Government's Action Plan in respect of "displaced" and "internally displaced" persons mentioned above, the ten year period starts to run from the time a person obtains the status of "foreigner with permanent residence". Time spent in the country prior to this – which as already observed amounts to decades in some cases – was not taken into account. However, the authorities have informed ECRI that a very recent Law on Amendments to the Law on Montenegrin Citizenship, adopted on 8 September 2011<sup>6</sup>, now provides for an exception to the above. Citizens of Former Yugoslavia who had permanent residence registered in Montenegro for at least two years before 3 June 2006 (independence) and have a valid identity card can acquire Montenegrin citizenship. ECRI notes that a very short deadline has been set for submitting applications before 31 January 2012 (four months). It is otherwise unable to comment on the effects of this new development in the present report.

- *National/ethnic minorities*

12. Special provisions for the protection of national/ethnic minorities have been included in the Constitution and the Law on Minority Rights and Freedoms of 2006.
13. Article 79 of the Constitution protects the identity of "persons belonging to minority nations and other minority national communities". The list of rights guaranteed includes the use of their own language and alphabet in private, public and official contexts; authentic representation in Parliament; proportionate representation in public services, state authorities and local self-government bodies; and the right to establish councils for the protection and improvement of minority rights.
14. The Law on Minority Rights and Freedoms of 2006 had been criticised for its restrictive definition of minorities: non-citizens, "displaced", "internally displaced" and stateless persons used to be excluded from its protection<sup>7</sup>. However, in December 2010 the law was amended (see Vulnerable/Target Groups, National/ethnic minorities) and citizenship is no longer a condition for being recognised as a minority member.
15. There appear to be few difficulties in practice regarding some of the rights listed in the Constitution, while others are not respected at all. In particular, there is no authentic representation in Parliament.

### **Criminal law provisions**

16. ECRI notes that Article 370 of the Criminal Code on causing national, racial and religious hatred and Article 443 on racial and other discrimination contain

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<sup>6</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

<sup>7</sup> See European Commission for Democracy through Law (Venice Commission), Opinion on the Constitution of Montenegro, Opinion No. 392/2006, 20 December 2007, and Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Montenegro, adopted on 28 February 2008.

exemplary provisions and sanctions<sup>8</sup>. However, Article 370 is rarely applied and Article 443 has never been applied. In the last ten years, 36 offenders have been prosecuted under Article 370 and only three convicted. One offender was granted conditional release and the two others were imprisoned for three and seven months respectively. According to public officials, most cases involving incitement to national or religious hatred are heard as misdemeanours in lower courts and these rarely result in convictions. Lack of evidence was cited as the main reason, but also lack of training in identifying a racist motivation (see section below on Training for law enforcement officials, prosecutors and judges).

17. One case, involving the vandalism and desecration of a Muslim property in Tivat (windows were broken and pig excrement thrown into the prayer area), which was originally recorded as the lesser offence of damage to property was later re-classified to the higher offence of inciting national, racial or religious hatred under Article 370 following criticism from individuals, NGOs and political parties. At the time of writing, the case was pending before the High Court. ECRI is encouraged by this demonstration that religious intolerance will be dealt with seriously and hopes that other such cases will be correctly classified in the future.
18. ECRI notes that although Article 42 of the Criminal Code sets out general principles for fixing a sentence, including the motives for which the offence was committed, there is no provision in the Criminal Code providing that racist motivation constitutes a specific aggravating factor in determining the punishment of crimes. ECRI considers that this additional element to ensuring that sanctions are effective, proportionate and dissuasive is crucial in the fight against racism and racial discrimination. It refers to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination (§ 21).
19. ECRI strongly recommends that the authorities amend the Criminal Code to ensure that it expressly states that racist motivation for any offence constitutes an aggravating circumstance.

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<sup>8</sup> Article 370 of the Criminal Code:

(1) Anyone who publicly invites to violence or hatred towards a group or member of a group defined on the basis of race, skin colour, religion, origin, national or ethnic affiliation, shall be punished by a sentence of imprisonment of six months to five years.

(2) The sentence referred to in paragraph 1 of this Article shall also be imposed on anyone who publicly approves, renounces the existence or significantly reduces the gravity of criminal offences of genocide, crimes against humanity and war crimes committed against a group or member of a group based on race, skin colour, religion, origin, national or ethnic affiliation, in the manner which can lead to violence or cause hatred against a group of persons or a member of such group, if those criminal offences have been determined by a final and enforceable judgment of a court in Montenegro or of the international criminal tribunal.

(3) Where an offence referred to in paragraphs 1 and 2 of this Article was committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other person's goods, by desecration of monuments, memorials or tombs, the offender shall be punished by imprisonment of one to eight years.

(4) Anyone who commits an offence referred to in paragraphs 1 to 3 of this Article by using his/her official position or authorizations or if these acts occurred due to disorder, violence or other grave consequences for the co-habitation of people, minorities or ethnic groups living in Montenegro, shall be punished for an act referred to in paragraph 1 of this Article by a sentence of imprisonment of one to five years, and for an act referred to in paragraphs 2 and 3 by a sentence of imprisonment of two to ten years.

Article 443 of the Criminal Code:

(1) Anyone who, on grounds of a difference in race, colour of skin, national affiliation or ethnic origin, or some other personal capacity, violates fundamental human rights and freedoms guaranteed by generally recognized rules of international law and international treaties ratified by SMN, shall be punished by an imprisonment sentence of six months to five years.

(2) The sentence referred to in paragraph 1 of this Article shall also be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people.

(3) Anyone who spreads ideas about the superiority of one race over another, or promotes racial hatred, or incites to racial discrimination, shall be punished by an imprisonment sentence of three months to three years.

## **Civil law provisions**

20. The Law on Prohibition of Discrimination was adopted on 27 July 2010. Prior to this, there was a number of non-discrimination provisions scattered in various pieces of legislation on labour, employment, healthcare and education. Article 2 of this law prohibits any form of discrimination on any ground. It goes on to define direct and indirect discrimination, listing a large number of non-exhaustive grounds, including “race”, colour of skin, national affiliation, social or ethnic origin, language and religion.
21. ECRI notes that Article 5 contains provisions on special measures to achieve equality and protect persons in an unequal position on any ground, reflecting ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. Article 29 provides for sharing the burden of proof and Article 30 gives third parties (including NGOs) the possibility to initiate proceedings.
22. However, although discrimination on grounds of “race”, colour of skin, national affiliation, social or ethnic origin, among others, is prohibited in the General Provisions section of the law (in Article 2), discrimination based on these grounds does not appear in the section on Special Forms of Discrimination where, for example, discrimination based on disability and on sexual orientation is included. ECRI considers that it is too early to attempt an assessment of the likely practical consequences of this drafting choice. However, it regrets that the fight against racism and racial discrimination is not especially highlighted in the law.
23. Until recently, the 2010 law could not be applied, primarily because it provides that the Protector of Human Rights and Freedoms is responsible for monitoring its application, but the Law on the Protector of Human Rights and Freedoms did not provide for the competences contained in the new law. ECRI is pleased to note that a new Law on the Protector of Human Rights and Freedoms was adopted on 29 July 2011<sup>9</sup>, establishing, in Article 27, the Protector as the national mechanism for the protection from discrimination by physical or legal persons. Thus the anti-discrimination legislation can now be applied and ECRI will review how this functions in its next monitoring cycle.

## **Training for law enforcement officials, prosecutors and judges**

24. Police are given basic training at the Police Academy. Compulsory subjects include human rights, ethics and operating in a multi-ethnic context. Training is provided by international organisations, including the Organisation for Security and Cooperation in Europe (OSCE), and civil society organisations, in line with international human rights standards and guidelines for police ethics.
25. The Judicial Training Centre for judges and prosecutors was founded in 2000 by the Ministry of Justice and the Association of Judges of Montenegro, Open Society Institute and the American Bar Association (Central and East-European Legal Initiative). The Centre organises various activities, including seminars, round tables, workshops, courses, regional conferences and study visits for the initial and in-service training of judges and prosecutors. It also distributes a monthly bulletin containing key judgments of the European Court of Human Rights to all courts and public prosecution offices in Montenegro. Training is organised in cooperation with international partners, notably the European Union (European Agency for Reconstruction), the OSCE, the Council of Europe, the AIRE (Advice on Individual Rights in Europe) Centre in London and the local NGO, CEDEM (Centre for Democracy and Human Rights).

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<sup>9</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

26. ECRI notes that there are no permanent or obligatory courses at the Judicial Training Centre and there are no set curricula. Courses include human rights and the case law of the European Court of Human Rights, and some training has been given on issues related to equality, tolerance and non-discrimination. The Centre is dependent on limited financing from the State budget and from international donors.
27. The Judicial Training Centre does not seem to provide any training for lawyers and ECRI is not aware of any special training in issues related to racism or racial discrimination which is offered to them.
28. ECRI recommends that the authorities strengthen the initial and in-service training provided to police, lawyers, public prosecutors and judges on issues related to equal treatment and non-discrimination, the criminal law provisions in force against racism and racial discrimination and on how to recognise the racist motivation of an offence.

### **Anti-discrimination body**

- *Protector of Human Rights and Freedoms (Ombudsman)*
29. The institution of the Protector of Human Rights and Freedoms (hereafter Protector) was set up in 2003. The Law on the Protector of Human Rights and Freedoms, as amended in 2011, and the Law on the Prohibition of Discrimination of 2010 establish the Protector as the national anti-discrimination body.
  30. The 2010 law does not provide for the establishment of a specialised anti-discrimination body, but grants additional competences to the Protector (Ombudsman), notably allowing him/her to act in the private sphere. These include providing information about rights and duties of victims of discrimination, conducting conciliation proceedings, keeping records of complaints of discrimination and awareness raising. However, the law fails to give the Protector investigative powers or the specific right to initiate, and participate in, court proceedings, as recommended in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. While ECRI welcomes the adoption of comprehensive anti-discrimination legislation, it regrets that the full range of possible powers were not granted to the Protector to combat discrimination effectively.
  31. ECRI was informed that the Protector has received a total of 20 complaints alleging discrimination from 2003 until 2010. These have mostly involved discrimination in employment or based on disability. Complaints from Roma, Ashkali and Egyptians (RAE) are very rare and mostly concern housing. Occasional complaints originate from minorities, in particular regarding the lack of proportionate representation of minorities in public bodies. The Protector has sent recommendations to the Government on how to observe the constitutional requirement in practice.
  32. ECRI is pleased to note that the Protector has made efforts to raise awareness of his role among the general public, including by telephone surveys, round tables and Ombudsman's Days in municipalities around the country. It has a user-friendly website providing detailed and practical information, as well as complaint forms, in Montenegrin, Albanian and English. ECRI has been informed that the recommendations of the Protector are almost always followed and that the institution is highly respected.

## II. Discrimination in Various Fields

### Education

33. The right to education under equal conditions is guaranteed under Article 75 of the Constitution. The same article also states that elementary education is obligatory and free of charge. Elementary (often also referred to as primary) education includes nine grades for children aged six to 14. Secondary schooling consists of four years of high school for students aged 15 to 18. Tertiary education is provided at the University of Montenegro and its 15 associated faculties.
34. Regarding national/ethnic minorities, with the exception of the Roma, Ashkali and Egyptian (RAE) community which is dealt with below, ECRI is not aware of any particular concerns over discrimination against persons belonging to these groups in access to education or in the school environment.
35. Some difficulties have been brought to ECRI's attention concerning the right of persons belonging to national/ethnic minorities to education in their own language and alphabet in public institutions and the right to have included in the curricula their history and culture, as guaranteed under Article 79 of the Constitution. While Albanian is offered as a language of instruction in schools throughout the country, this is not the case with the other minority languages present in Montenegro. Article 22 of the Law on General Education states that teachers, parents and schools, in cooperation with the local community, may freely design 20% of the curriculum. This part can be used, inter alia, to teach in regional or minority languages, or to teach about the history, culture, music and traditions of national/ethnic minorities. It is reported that in practice teachers rarely take advantage of this opportunity. ECRI recalls that the first monitoring cycle Report of the Committee of Experts on the European Charter for Regional or Minority Languages, adopted on 20 January 2010, deals with these issues in detail.
36. As concerns RAE, ECRI notes with great concern that these children face considerable problems not only with discrimination in education but also, in some cases, with access to education. ECRI has heard about incidents of verbal abuse by both teachers and other pupils on grounds of these children's ethnicity. Segregation in education is linked to residential segregation – many RAE live in isolated settlements, often in refugee camps, where access to schools is limited.
37. According to the authorities, around 80% of the RAE population is illiterate. One of the most serious problems is the high and early drop out rate. Data indicates that only around 20% of RAE pupils complete compulsory education. This is attributed by the authorities to a number of factors: RAE children do not speak the official language (Montenegrin); the lack of socio-economic means to prepare children for elementary school; insufficient awareness within the RAE community of the significance of education; and extreme poverty. ECRI notes that RAE children are seriously disadvantaged by the fact that education is not available in their native language (Romani). There are few pre-school possibilities to enable them to overcome the difficulties associated with lack of knowledge of the Montenegrin language.
38. ECRI recommends that the authorities increase RAE children's attendance at pre-school facilities, to enable them to learn the Montenegrin language before entering elementary school.
39. The authorities have informed ECRI that much effort has been put into the education of RAE children in the last decade. In particular, the Strategy for the

improvement of the position of the RAE population in Montenegro 2008-2012 (hereafter the RAE Strategy), adopted by the Government in 2007, acknowledges that a large part of RAE children are not included in the mandatory system of elementary education. The Strategy states that education is the most important field of urgent action for the Government. It sets out concrete goals to create the essential conditions for RAE children and youth to secure the enjoyment of the right to education.

40. The RAE Strategy provides for free school books and materials for all RAE children attending elementary school on a regular basis; special activities on preventing segregation and discrimination; instruction in the Romani language and culture in schools with a high percentage of RAE pupils; secondary school grants and university scholarships for a certain number of RAE each year; and adult literacy programmes. ECRI notes that some of the above are being implemented.
41. One programme involves the employment of Roma assistants in schools with a high number of RAE, not only to help these children adapt to the school environment and overcome language difficulties, but also to create a link between the child, the family, the school and the community. The authorities have reported that this initiative has had limited success. This is due mainly to insufficient numbers of RAE with the necessary qualifications who can be employed as Roma assistants. It is important that the authorities continue to support this programme and take all necessary steps to encourage RAE to take up careers as Roma assistants. ECRI is convinced that the teaching support provided by educated RAE adults, who act also as role-models, must have a significant impact on the RAE children concerned.
42. ECRI strongly encourages the Montenegrin authorities to continue their efforts to support the training and recruitment of Roma assistants and increase their numbers.
43. ECRI notes that while the results so far are not exceptional, they do indicate significant progress. For example, according to information provided by the authorities, there has clearly been a small but steady annual increase in enrolment at both elementary and high school levels. In the 2001-2002 school year, there were 536 enrolments of RAE children in elementary school, while in the 2010-2011 school year, the figure rose to 1 424 enrolments. However, the data reveals that there is a tremendous drop from elementary school attendance to secondary school attendance. In the 2010-2011 school year, there were only 78 enrolments at high school. As for higher education, ECRI has been informed that two RAE hold university degrees and that there are ten RAE students currently attending university. Scholarships are provided for RAE students in higher education, covering housing and travel expenses. ECRI commends Montenegro on these achievements which are a testimony to the fact that investment in education does yield results.
44. Regarding RAE children at the Konik camp, according to the authorities, the Red Cross of Montenegro provides children of school age with clothes and materials for attending a branch of the local school which was set up inside the camp. However, the authorities admit that the school does not have the necessary facilities and the quality of education provided is extremely low. According to people interviewed at the camp, the school is only open for one hour each day. It is only attended by RAE children from the camp. Thus, they are segregated from children from other communities. This seriously affects their integration possibilities in Montenegrin society and contributes to the cycle of low educational attainment, extreme poverty and social exclusion. ECRI believes that a solution must be found rapidly for the children living at Konik to exercise their



right to education under Article 2 of the Protocol to the European Convention on Human Rights.

45. In view of the harsh conditions at Konik and the destitution of the inhabitants, ECRI is not convinced that plans to establish a bus service to transport the children to various schools around the town constitute the right approach. In ECRI's view, it would first be necessary to relocate the families of the children concerned to standard accommodation in various places and then distribute the children into different schools where they could mix with children from other communities. This could be a first step to the dismantling of the Konik camp (see Housing below).
46. ECRI urges the authorities to enable the families of the children of school age living at the Konik camp to move into standard housing in different parts of the town or country and place the children in various schools so that they can exercise their right to education under Article 2 of the Protocol to the European Convention on Human Rights.

### **Employment**

47. Article 3 of the Labour Law of July 2003 provides for equal treatment of employees regardless of their nationality, race, gender, language, religion, political or other orientation, education, social background, wealth or other individual attributes. In addition, the new Law on the Prohibition of Discrimination, once it can be applied, will also provide a legal basis for complaints of racial or ethnic discrimination in employment.
48. The Law on Employment and Work of Foreigners of March 2008 provides for the employment of refugees, but since Montenegro does not recognise "displaced" and "internally displaced" persons as refugees, they appear to be excluded from its scope. Restricted access to employment has pushed many of these people into grey market activities for survival. However, a decree on the resolution of labour regulations on "displaced" and "internally displaced" persons was adopted in August 2010 and is valid until 7 January 2012. This states that "displaced" and "internally displaced" persons lawfully residing in Montenegro until their status is determined have access to the same rights and services as Montenegrin citizens, including in the field of employment. In addition, the Law on Foreigners states that persons with the status of "foreigner with permanent residence" have the right to work and employment. ECRI notes that, at least for the time being, "displaced" and "internally displaced" persons have access to the labour market.
49. According to various accounts, "displaced" persons from Bosnia and Herzegovina and Croatia suffer little discrimination in employment. This may be attributed to the lack of any language barrier. As for "internally displaced" persons from Kosovo, according to figures provided by the Ministry of Labour and Social Welfare from the second half of 2010, out of a total of 10 760 persons, of whom 7 500 are able to work, there are only 510 in permanent employment, 1 084 in temporary jobs, 49 are farmers and 4 300 are registered as unemployed.
50. Concerning Roma, Ashkali and Egyptians (RAE), ECRI notes that they have a very low level of employment. According to some figures, more than 80% of the RAE population of Montenegro is unemployed. The disproportionate level of unemployment among RAE is attributed to poor educational attainment and lack of professional qualifications, as well as to open or hidden discrimination. Of those living in the Konik camp, almost no one is employed. Many collect waste material for recycling or resort to begging. The high degree of poverty contributes to the further social exclusion of this population.

51. RAE are classified by the Employment Office as “hard to employ persons”. The authorities have informed ECRI about a number of projects that have been implemented aiming at increasing the employability and employment of the RAE population. ECRI notes that through the various literacy and vocational training programmes, some RAE have found jobs. In addition, a large number of RAE have been hired to undertake public works, that is, socially useful, non-profit activities in municipalities.
52. Nevertheless, ECRI regrets that even in cases where RAE have achieved high standards in education or vocational training, they still face difficulties finding employment. Of 13 RAE who were successful in the examinations for employment in the state administration, not one has been offered a job so far. A local NGO has registered numerous cases of RAE who had successfully completed professional training courses, such as in hairdressing, but had not been able to find jobs due to clients’ rejection of their services. ECRI has also been informed that seven RAE completed a course in journalism, but only one has found a part-time job in radio and television. ECRI considers this situation particularly discouraging.
53. Employment is one of the eight priority areas in which the Montenegrin Government intends to undertake “appropriate, urgent and comprehensive measures” in the framework of its RAE Strategy. The strategy proposes the training of RAE for higher competitiveness in the labour market, elimination of open or hidden discrimination and an increase in the employment rate through measures of affirmative action. These include quotas for the employment of unemployed RAE in certain jobs, tax exemptions and subsidies for entrepreneurs who employ RAE workers and special funds for interest-free or low interest loans for RAE entrepreneurs or self-employed RAE.
54. ECRI recommends that the authorities actively encourage the employment of members of the RAE population, for example through tax incentives and subsidies for employers who hire RAE workers and interest-free loans for RAE entrepreneurs.
55. Regarding national/ethnic minorities, the Constitution contains a provision on their proportionate representation in public services, state authorities and local self-government bodies. Minority representatives claim under-representation, in particular in the administration, judiciary and the police. Research carried out by the Ministry of Human and Minority Rights and the Ombudsman showed that all ethnic communities were sub-represented in comparison with Montenegrins. As already observed, it is difficult to obtain a true picture because people are not asked - and are generally unwilling - to disclose their national/ethnic affiliation.

## **Housing**

56. ECRI notes that the most urgent question in the field of housing concerns the Roma, Ashkali and Egyptian (RAE) population, a great many of whom live in sub-standard accommodation, often in informal or illegal settlements which lack basic utilities and services.
57. A delegation of ECRI visited the camp at Konik, on the outskirts of Podgorica, where the largest group of around 1 500 “internally displaced” RAE from Kosovo are currently living. The camp is divided into two areas known as Konik I and Konik II. The camp has been set up on the site of a garbage dump, away from other residential areas and communities. This amounts to de facto segregation. Housing consists of broken-down wooden barracks with corrugated iron or plastic roofing. The barracks have no electricity, no cooking facilities, no running water, no sanitation or amenities of any kind. Each camp has one area where people can collect water in buckets. Rubbish of all kinds is strewn throughout the camp.

At the time of ECRI's visit a fire had destroyed a part of the camp and made 17 families homeless. It appears that due to poor infrastructure and lack of adequate security regarding the supply of electricity, fires in RAE settlements are relatively common and have resulted in fatalities. In October 2010, two children died in a fire at a similar RAE settlement in Kotor.

58. It is clear that some attempts have been made to provide assistance to the inhabitants of Konik. The Red Cross has established a permanent presence and provided two basic medical consulting rooms and the services of a doctor for two hours each day. A shower room was reported to exist, but, according to the inhabitants, was never used due to the absence of hot water. A school was opened in the camp (see the section on Education above), and a children's playground installed.
59. ECRI is deeply alarmed at the appalling living conditions and deprivation of the inhabitants of this camp. ECRI considers that the current housing arrangements for this group of people are not only unhealthy, insanitary and inhuman, but also extremely hazardous. The situation is all the more shocking in view of the fact that many of the residents claimed to have lived in this way for almost 12 years.
60. The RAE Strategy acknowledges that the primary issue for the inhabitants of Konik is one of survival, due to the lack of access to clean drinking water and other sanitary and sewage facilities. It refers to the long-term objective of general improvement of housing conditions of the RAE population. As a short-term and realistically achievable objective, the RAE Strategy provides for the urgent improvement of housing conditions to ensure minimum standards. These include the legalisation of RAE neighbourhoods; their connection to infrastructure facilities, such as drinking water and sewage systems; reconstruction of residential areas with solid materials; relocation of rubbish dumps from the vicinity of RAE settlements; and the securing of a certain number of social apartments each year for the most needy members of the RAE population.
61. ECRI notes that discussions about closing the camp at Konik have been going on for several years without results. However, Montenegro is now under new pressure to resolve the issue. In order for negotiations to be opened on accession to the European Union, seven key priorities must be addressed by Montenegro. One of the priorities includes the adoption and implementation of a sustainable strategy for the closure of the Konik camp. ECRI agrees that it is a matter of utmost urgency for the Konik camp to be shut down as soon as possible.
62. ECRI takes note of the Government's Strategy for permanently resolving the issue of displaced and internally displaced persons in Montenegro with a particular focus on Konik I and II, adopted on 28 July 2011<sup>10</sup> (see Vulnerable/Target Groups – National/ethnic minorities - "Displaced" and "internally displaced" persons). ECRI is concerned, however, that the Government is focusing more on voluntary return to Kosovo or resettlement in a third country as the main solutions, rather than integration in Montenegro. Inhabitants of the camp have even been asked in a recent survey to state which option they preferred. ECRI is also uneasy about some of the short-term measures set out in the RAE Strategy, such as the legalisation of Roma neighbourhoods and reconstruction of residential areas with solid materials. In ECRI's view this would serve only to perpetuate the segregated living areas of RAE, albeit in improved conditions. ECRI believes that the authorities should take

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<sup>10</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

steps to resolve the housing issue of the RAE at Konik in a more permanent manner.

63. ECRI finds the zoning plans contained in the above-mentioned Strategy concerning the construction of 90 housing units in the area of Konik I particularly worrying. It considers that the authorities should enable the residents of Konik to move to standard housing around the city or around the country where they can become integrated with the rest of the population. They should not simply be moved to a better housing area which is also segregated. This would only promote the development of new ghettos. Nor should they remain in the segregated setting in which they already find themselves. A real attempt should be made to mix and integrate them with other communities. ECRI also feels that it is crucial for the authorities to undertake full and open consultations with the people concerned so that they can contribute to the solutions found and support whatever steps are eventually taken.
64. ECRI urges the Montenegrin authorities, after full and open consultations with the people concerned, to find standard accommodation around the town or the country for the RAE inhabitants of Konik, and close down the camp.

### **III. Climate of Opinion and Political Discourse**

65. ECRI notes that there is little hostility towards or between national/ethnic minorities present in Montenegro. By all accounts, Montenegro is a good example of multi-ethnic tolerance. As already noted, proportionate representation has not been achieved, but minorities are represented, including at the highest levels: the current Vice-President of Parliament is Bosniac and the current Minister of Minority Rights and Freedoms is Albanian.
66. Having said this, there are nevertheless negative attitudes and widespread prejudice towards the Roma, Ashkali and Egyptian (RAE) population, especially the "internally displaced" RAE from Kosovo. According to a recent survey, 90% of people stated that they did not want any connection to RAE people at all. This prejudice seems to have manifested itself in areas such as employment and housing. ECRI has made recommendations in other parts of this report aimed at improving the situation of the RAE and the climate of opinion towards them.
67. There is no state religion in Montenegro. The State financially assists some activities of the main religious communities. Inter-faith relations are said to be overall smooth, but there are tensions between the Serbian and Montenegrin Orthodox Churches over canonical recognition and property issues. Despite the constitutional division of State and church, there have been instances of involvement of the authorities in the dispute between the two churches. As a result, there are reported to be some tensions between ethnic Serbs and Montenegrins.
68. There is little evidence of any anti-Muslim feeling, although isolated incidents of religious hatred have occurred (see Criminal law section above).
69. ECRI notes that there is no organised Jewish community in Montenegro and no synagogue. ECRI is not aware of any reports of antisemitism.
70. As for political discourse, ECRI has been informed that there is a certain amount of nationalism in politics and ethnic divisions are frequently emphasised. However, this does not seem to translate into discriminatory or racist language against national/ethnic minorities.

#### **IV. Racist Violence**

71. ECRI is pleased to note that there appear to be no particular racist-violence problems in Montenegro.
72. ECRI has, however, heard about one recent case of violence against Roma, Ashkali and Egyptians (RAE). Some RAE who were caught stealing by members of the public allege that they were subjected to a violent attack before being handed over to the police. The case is being investigated by the Protector of Human Rights and Freedoms.
73. ECRI recommends that the authorities take action to condemn in moral terms but also to prevent and punish all expressions of incitement to hatred against persons or groups of persons on account of their ethnic origin, language or religion.

#### **V. Vulnerable/Target Groups**

##### **National/ethnic minorities**

74. Several ethnic groups live in Montenegro, none of which forms the majority. According to the results of the 2003 census, the ethnic structure of the population in Montenegro includes the following: Montenegrins 43.1%; Serbs 31.9%; Bosniacs 7.7%; Albanians 5%; Muslims 3.9%; Croats 1.1%; Roma 0.4%. A new census was conducted in April 2011.
75. ECRI recalls that two specialised monitoring mechanisms of the Council of Europe set up under Framework Convention for the Protection of National Minorities<sup>11</sup> and the European Charter for Regional or Minority Languages<sup>12</sup> deal in detail with issues concerning the distinct national/ethnic minority identity.
76. ECRI, for its part, takes note of the Government's considerable efforts in this field. For example, financial support is provided from the state budget to the six Minority Councils (Albanian, Bosniac, Croatian, Muslim, Roma and Serbian) for administrative functioning as well from the Minority Fund for minority-related projects. A Centre for Minority Culture has been set up and is funded by the Government to promote the culture of the country's minorities through various events, round tables and workshops. These demonstrate a positive attitude which ECRI finds commendable.
77. However, some problems remain concerning the implementation of Article 79 of the Constitution<sup>13</sup>. For example, there is no authentic representation of national/ethnic minorities in Parliament. ECRI notes that the Law on Amendments to the Law on Election of Councillors and Members of Parliament was adopted on 8 September 2011.<sup>14</sup> According to this, all minorities can compete for a number of seats in the Parliament "based on percentages", although the total number of seats to be held by minority members will not change significantly. It is also generally agreed that proportionate representation in public services, state bodies and local self-government has not been achieved. This is mainly due to

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<sup>11</sup> See Opinion on Montenegro of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 28 February 2008.

<sup>12</sup> See Report of the Committee of Experts on the European Charter for Regional or Minority Languages, adopted on 20 January 2010.

<sup>13</sup> See Constitutional and other fundamental provisions – National/ethnic minorities.

<sup>14</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

the absence of reliable data reflecting the current national/ethnic composition of the population on which to base such representation<sup>15</sup>.

78. As regards recent developments, ECRI notes that amendments to the Law on Minority Rights and Freedoms were adopted by Parliament in December 2010. These include the introduction of new rules on elections to the Minority Councils, as well as on the allocation of funding. The latter has been a contentious issue due to lack of accurate data on the number of members of the various national/ethnic minority communities. Funding will in future be based on the quality of projects rather than on the size of the minority. ECRI welcomes these developments which demonstrate a sensitivity to each national/ethnic minority's real needs. However, it has been told that the changes have not yet been applied in practice because new rules of procedure still have to be drafted.

79. ECRI recommends that the necessary steps are taken in order for the amendments to the Law on Minority Rights and Freedoms to be applied.

### **“Displaced” and “internally displaced” persons**

80. As a result of armed conflicts during the break-up of Yugoslavia and ensuing ethnic wars in the region, Montenegro provided shelter for around 140 000 persons, which at that time constituted a quarter of the entire population. Those who arrived from Bosnia and Herzegovina and Croatia were classified as “displaced” persons, while persons fleeing from Kosovo were given the administrative status of “internally displaced” persons. Neither group were recognised as refugees at the time of their arrival (they had not crossed an international border) or later following the independence of Montenegro, although they are commonly referred to as refugees. The Law on Asylum of July 2006 enabled the authorities to conduct a re-registration process, which was organised in 2009, to ascertain the current numbers. According to the official data, there are 5 415 “displaced” persons from Bosnia and Herzegovina and Croatia and 10 948 “internally displaced” persons from Kosovo residing in the country. Their uncertain legal status in Montenegro, which has so far not been resolved, has limited their access to important economic and social rights and left them particularly vulnerable.

81. In an attempt to resolve the complex issue of their legal status, the Government has adopted a series of laws and measures which define the repatriation or integration of “displaced” and “internally displaced” persons. These include the Law on Foreigners and the Law on Amending the Law on Foreigners of October 2009, as well as the Action Plan for resolving the status of displaced persons from the former Yugoslav Republics and internally displaced persons from Kosovo residing in Montenegro, adopted in October 2009. In July 2011, a Strategy for permanently resolving the issue of displaced and internally displaced persons in Montenegro, with a particular focus on the Camps Konik I and II, was adopted and replaces the above-mentioned Action Plan.<sup>16</sup>

82. The Strategy envisages implementation from mid-2011 until the end of 2015, with funding provided by both Montenegro and international donors. It provides for two ways to resolve the issue: integration in Montenegro through access to the status of “foreigner with permanent residence” or voluntary return to the place of origin of the persons concerned. Persons who obtain the status of “foreigner with permanent residence” will gain access to all social rights and public services, including employment, education, social security, healthcare and pension

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<sup>15</sup> See the section on Monitoring Racism and Racial Discrimination.

<sup>16</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

insurance. ECRI notes that the authorities continue to pursue repatriation as an option despite relatively low levels of interest so far (according to information provided in September 2011, 476 persons have applied to return to Kosovo). In this connection, a readmission agreement was signed with Kosovo on 29 June 2011<sup>17</sup>.

83. Two years have been given for “displaced” and “internally displaced” persons to apply to the Ministry of Internal Affairs and Public Administration for the status of “foreigner with permanent residence”, the deadline being 7 November 2011. Applicants must pay an administrative fee, which was initially fixed at 200 Euros per person, in addition to a labour license tax of 165 Euros. However, acknowledging that these costs represented one of the largest obstacles for “displaced” and “internally displaced” persons in the application procedure, the authorities reduced the necessary administrative charges to 10 Euros per residence permit issued. ECRI welcomes the removal of this major inhibiting factor.
84. However, applications also require the submission of specific documents: a valid travel document from their country of origin, a birth certificate and citizenship documents. ECRI notes that this represents a virtually insurmountable problem for a great many “displaced” and “internally displaced” persons. Most do not have passports from their home countries and many are no longer in possession of their birth certificates or never had any. It is estimated that around 2 200 people, the vast majority Roma, Ashkali and Egyptians (RAE), do not have any personal documents. In order to obtain these, they would need to return to their home countries to apply for them. However, they cannot travel without passports and the majority cannot afford the travel and administrative costs involved. ECRI concludes with concern that it will be impossible for a great many people to comply with the requirements concerning documents.
85. The final condition is having no criminal record in Montenegro. The Law on Foreigners states that permanent residence shall not be granted to a foreigner who has been sentenced for a criminal offence or where criminal proceedings have started. As stated in § 86 above, the deadline for filing an application for permanent residence is 7 November 2011. As a consequence, a person who is subject to criminal proceedings and has his/her application dismissed as a result of the above-mentioned provision may, in case of acquittal, be too late in filing a new application. One way of preventing this would be to suspend the examination of the application for permanent residence while the criminal proceedings are pending.
86. ECRI strongly recommends that the authorities amend the Law on Foreigners that provides for the refusal of permanent residence to a foreigner on the ground that criminal proceedings have been instituted against him/her, so as to enable a person who has been acquitted of a criminal charge to resume an application for permanent residence that has been filed before the deadline. ECRI also recommends that minor offences<sup>18</sup> should not prevent the examination of the application.
87. To their credit, the authorities have taken a number of steps to assist “displaced” and “internally displaced” persons with the necessary procedures. They have made efforts to raise awareness among the populations concerned, including by broadcasting information on all television channels and producing leaflets which

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<sup>17</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this subsequent development.

<sup>18</sup> It is up to the authorities to decide what constitutes minor offences, based on the nature of the acts committed or on the penalty prescribed.

were translated into the Romani and Albanian language. As mentioned above, the administrative costs have been greatly reduced to reasonable amounts. The authorities have stated that they are negotiating with the countries of origin of the people concerned to facilitate the procedure of obtaining passports and birth and citizenship certificates. An agreement has recently been signed with Kosovo on the registration of “internally displaced” persons residing in Montenegro in the citizenship registers of Kosovo and the organisation of collective trips to Kosovo for people to obtain the necessary documents in order to regularise their status in Montenegro is being considered. In July 2010, the Government adopted the decree on the manner of exercising the right of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro. According to this, until people obtain the status of “foreigner with permanent or temporary residence”, they may exercise their rights in the same manner as citizens of Montenegro in the fields of labour and employment, education, social care and childcare, healthcare and insurance, and pension and disability insurance, but not beyond 7 January 2012. Lastly, it should be noted that the above-mentioned action plan enables “displaced” and “internally displaced” persons who are not able to obtain valid travel documents by 7 November 2011, but who meet the other requirements, to be granted temporary residence until the necessary travel documents are obtained for granting the status of foreigner with permanent residence. Temporary residence lasts for a maximum of three years.

88. In September 2011, of the 16 000 people concerned, only around 4 500 had applied for the status of “foreigner with permanent residence”, of whom about 1 500 had so far been approved.<sup>19</sup> As for temporary residence, so far 182 applications have been filed and 71 approved. This is an indication that a great many people are experiencing difficulties with the application procedure and ECRI is very concerned that large numbers will not have registered by the deadline.
89. After the deadline, according to the authorities, all those who are not registered as “foreigners with permanent or temporary residence” will be illegal foreigners in Montenegro. ECRI was not able to obtain information about their fate thereafter.
90. In ECRI’s view, the Montenegrin authorities have established an overly complicated procedure to resolve the status of “displaced” and “internally displaced” persons on its territory. Consequently, they should provide all possible help and assistance to the persons concerned to ensure that, for reasons beyond their control, they are not excluded from applying for permanent residence in Montenegro.
91. ECRI urges the authorities to take all possible steps to facilitate the procedures for “displaced” and “internally displaced” persons to obtain the status of “foreigner with permanent residence” in Montenegro. They should ensure, where necessary, that lack of financial means to obtain the necessary documents is not an obstacle. In particular, they should ensure that those persons, primarily RAE, who have no birth or citizenship certificates are not automatically excluded from the possibility of obtaining the status of “foreigner with permanent residence” in Montenegro.
92. Lastly, ECRI notes that some people risk de facto statelessness, as they will be neither foreigners nor citizens. This mostly concerns RAE from Kosovo who were either never registered at birth or lack proof of registration. This is a deeply worrying situation and ECRI urges the authorities, in cooperation with

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<sup>19</sup> Although this report covers the situation up to 22 June 2011, ECRI considered it important to include this information provided by the authorities.



neighbouring States and relevant international organisations, to find a satisfactory solution. ECRI notes that Montenegro ratified the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession on 28 April 2010. However as Montenegro considers Serbia to be the successor state, it does not consider itself obliged to grant citizenship to persons who would otherwise become stateless as a result of the dissolution of the State Union of Serbia and Montenegro. Montenegro has not acceded to the 1961 Convention on the Reduction of Statelessness, which establishes safeguards against statelessness at birth, later in life by prohibiting the withdrawal of citizenship and in the context of transfer of territory.

93. ECRI recommends that Montenegro ratifies the 1961 Convention on the Reduction of Statelessness and takes the necessary steps to ensure that a solution is found for all persons currently at risk of de facto statelessness.

#### **Roma, Ashkali and Egyptians (RAE)**

94. The term Roma, Ashkali and Egyptians (RAE) is used in Montenegro in order to include the so-called domiciled (sedentary) Roma as well as the different ethnic populations of RAE who have the status of “internally displaced” persons from Kosovo. As already observed, these people were never officially recognised as refugees, but they are commonly referred to as “refugee RAE”.
95. According to the Statistical Office of Montenegro, there are 9 934 RAE in Montenegro, of which 5 649 are domiciled Roma and 4 285 are “internally displaced” RAE from Kosovo. Unofficial estimates, however, put the total figure of all RAE at around 20 000 persons.
96. ECRI notes that, according to many accounts, a part of the RAE population is relatively well integrated in Montenegrin society. This group is referred to as “domiciled” RAE and their situation is encouraging. They mostly live in standard housing in mixed communities. Problems exist in the field of education and discrimination in employment remains a concern (see sections above on Education and Employment).
97. ECRI particularly appreciates a recent initiative supported by the Ministry of Human and Minority Rights, among others, to acknowledge and pay tribute to RAE role-models. This involved the publication of a collection of photographs and descriptions of 32 successful RAE, including university students, primary school assistants, artists, musicians, a journalist and the only RAE person ever to be employed in the state administration. The publication states that “by their own example, models portrayed in these photos are proving that accomplishment of personal and professional success is possible despite the aggravating circumstances”.
98. However, there remains a substantial group of RAE who are without doubt the most destitute, marginalised and vulnerable of all population groups in Montenegro. Most of them arrived in Montenegro in 1999 and their situation continues to present serious human rights concerns. As mentioned above in the section on Housing, they mostly live in illegal settlements, segregated from other communities, in conditions of abject poverty and hardship. They have little or no access to public services or social assistance. According to the authorities, approximately 170 families with 547 members are entitled to and receive material support.
99. In 2005, Montenegro joined the regional project Decade of Roma Inclusion 2005-2015 and adopted the National Action Plan for its implementation, in partnership with international and non-governmental organisations. It represents a framework for activities directed toward the integration of the RAE population, under four

priority areas of action: education, employment, health and housing. According to one public official, the expected results were not achieved.

100. In November 2007, the Government adopted the RAE Strategy, which has been referred to above, covering the period 2008-2012. It represents a set of concrete measures and activities for the period ahead, under the responsibility of the Ministry of Human and Minority Rights. The RAE Strategy recognises the terrible socio-economic situation of the RAE population in Montenegro (“Roma ... are exposed to marginalisation and hindered access not only to fundamental human rights and freedoms, but also some elementary human needs”) while it emphasises the importance of positive measures to ensure equality. Under its framework, the Government intends to undertake priority measures in the following eight areas: official statistics; legal status and prohibition of discrimination; education; employment; healthcare; social protection and protection of children; housing; and political representation of the RAE population. The RAE Strategy sets out budgetary allocations and time-frames for the implementation of the measures, some of which have been described above in the sections on Education, Employment and Housing.
101. In March 2008, the Government established the Commission for the Implementation of the RAE Strategy, composed of 12 persons from relevant ministries, the employment agency, the Roma Council and Roma NGOs. Two of the 12 members are RAE. The Commission allocates funds for the projects listed in the Strategy based on tenders and files annual reports on implementation to the Government.
102. As previously mentioned, Montenegro is required to meet seven key priorities in order for negotiations to be opened on accession to the European Union. One of these is to “guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights”. Many RAE are not legally registered at all and they do not have any personal documents, which hinders access to their rights. Reports indicate that many RAE are not aware of the importance of civil registration and seldom register their children when born at home. Other parents appear to have encountered obstacles when trying to register their children due to the absence of their own documents. The RAE Strategy requires the issuing of personal documents to those who are Montenegrin citizens and domiciled in Montenegro. For those who are not Montenegrin citizens but are domiciled in Montenegro, documents for foreign nationals must be issued. While ECRI welcomes these provisions, it notes that little has been done so far and urges the authorities to accelerate and intensify this process.
103. ECRI recommends that the authorities take steps to raise awareness of the importance of and promote birth registration among the RAE population. There should be no obstacles to such registration and the procedures should be simple and accessible.
104. ECRI recommends that the authorities pursue and intensify the issuing of personal documents to RAE, in accordance with the Strategy for the improvement of the position of the RAE population in Montenegro 2008-2012.
105. Finally, ECRI takes note that some RAE who are domiciled in Montenegro are confronted with the risk of statelessness for the same reasons as “internally displaced” RAE from Kosovo, that is that they were not registered at birth or they lack proof of such registration. See the section above on “Displaced” and “internally displaced” persons.

## Muslims

106. Muslims represent one of the country's six national/ethnic minority communities and they have established a Muslim Council.
107. ECRI notes that Muslim communities do not complain of any particular discrimination towards them. Isolated incidents of religious hatred targeting Muslims have occurred (see Criminal law section). According to some reports, there are complaints of insufficient burial grounds.

## Refugees and asylum seekers

108. The right to asylum is guaranteed by Article 44 of the Constitution and regulated by the Law on Asylum of July 2006. However, ECRI notes that the law cannot be fully implemented because other national laws, regulations and instructions have not yet been harmonised with it. Thus asylum seekers face numerous difficulties accessing some basic rights and services guaranteed by law.
109. ECRI recommends that all secondary legislation necessary for the implementation of the Law on Asylum is adopted as soon as possible so that asylum seekers can have full access to their rights.
110. The Asylum Office is responsible for refugee status determination at first instance. The State Asylum Appeals Commission is the second instance body which adjudicates appeals lodged against decisions of the first instance body. According to Article 20 of the Law on Asylum, the five-member State Asylum Appeals Commission is an administrative body appointed by the Government whose members should be persons employed in judicial bodies, the public administration or the public service. Despite the authorities' assurances that its members exercise their functions in an impartial and independent manner, in ECRI's view the State Asylum Appeals Commission does not constitute an independent body. Moreover, its decisions are final; there is no provision for judicial review. ECRI notes with concern that rejected asylum seekers do not have an effective remedy before a tribunal.
111. ECRI recommends that the authorities take steps to ensure that asylum seekers may appeal against asylum decisions before an independent and impartial tribunal.
112. The Law on Asylum provides for cooperation with the United Nations High Commissioner for Refugees (UNHCR) at all stages of the asylum procedure. UNHCR staff are present during interviews. The Bureau for the Care of Refugees is tasked with providing assistance to asylum seekers and refugees in accessing their rights. These include accommodation, education, healthcare, social welfare, legal assistance and access to humanitarian and non-governmental organisations. According to the law, accommodation is to be provided in the Centre for Accommodation of Asylum Seekers. However, a reception centre with a capacity of 65 persons is still under construction near Podgorica and is expected to be operational in 2012. The UNHCR has funded rented accommodation for some asylum seekers, while others have been placed in the Konik camp.
113. ECRI recommends that the authorities complete the building of a reception centre to accommodate asylum seekers as soon as possible and ensure that it has all the necessary facilities and staff to function correctly.
114. ECRI regrets that the Law on Asylum does not provide for the right to work for asylum seekers, other than within the reception centre. ECRI considers that asylum seekers should be permitted access to the labour market in the shortest

possible time after submitting their asylum applications in order to avoid becoming dependent on state benefits, to prevent situations of labour exploitation and to improve their integration prospects.

115. ECRI recommends that the authorities reconsider their position on access to employment for asylum seekers so that they are not all automatically excluded from this possibility regardless of their length of stay in the country.
116. Since May 2006, Montenegro has received 46 persons seeking asylum. So far only one person has been granted subsidiary protection. One person had been recognised as a refugee; however, his status was revoked in July 2010 because he had re-availed himself of the protection of his country of origin by obtaining a biometric passport from it. His appeal was rejected.
117. ECRI notes that Montenegro has had little exposure to immigration and a proper asylum system is not yet in place. At present it is more of a transit country than a country of destination for asylum seekers. As EU integration approaches, however, the number of asylum seekers is expected to rise. The authorities would do well to start preparing for this by ensuring that their legislation and practice are in line with EU acquis in this field (such as the right to an effective remedy before a court, in accordance with Council Directive 2005/85/EC, and access to employment, under Council Directive 2003/9/EC).
118. Furthermore, they should ensure that staff who come in contact with asylum seekers, including border guards and those responsible for conducting asylum interviews, are properly trained. Training should focus on guaranteeing respect for human rights and the principle of non-refoulement, as well as respect for cultural diversity and non-discrimination.
119. ECRI encourages the authorities to ensure the training of staff in contact with asylum seekers in guaranteeing respect for human rights and the principle of non-refoulement, as well as respect for cultural diversity and non-discrimination.

## **VI. Conduct of Law Enforcement Officials**

120. ECRI has heard reports of inappropriate behaviour and misconduct of police towards Roma, Ashkali and Egyptians (RAE). For example, it has been alleged that police frequently fail to provide access to lawyers for RAE suspects, or require them to sign statements which they cannot read or understand. There have also been allegations of police brutality and ill-treatment, with RAE being particularly targeted.
121. According to the Law on Police, the Department for Internal Control of the Ministry of Interior is responsible for internal oversight of the police. The same law also provides for the creation of an independent Council for Civil Control of Police Work as an external oversight mechanism. This is an expert advisory body consisting of a president and four members appointed for a five year term of office by the Bar Association, the Medical Association, the Association of Lawyers, the University of Montenegro and an NGO protecting human rights. Anyone may address the Council with a complaint. It has broad powers to investigate.
122. Supervision over the legality of police activities is also exercised by the Parliament of Montenegro through the Parliamentary Committee for Security and Defence.
123. In addition, ECRI notes that Article 2 of the Police Code of Ethics states: "When conducting police procedures, police officers shall respect basic human rights and freedoms of all citizens, regardless of differences in nationality, race, skin

colour, religion, gender, education, social status or any other personal circumstance”. Despite this, as observed above, a specific ethnic group is more often targeted than others in allegations of police abuse. ECRI has already recommended the authorities to pursue their efforts to ensure that police training specifically covers questions of racism and racial discrimination (see Training for law enforcement officials, prosecutors and judges).

124. Thus ECRI notes that there is a system of internal and external oversight of the police in place in Montenegro. The above allegations of ethnically-motivated police misconduct may indicate that these control mechanisms are not sufficient.
125. ECRI has been informed that there are few members of national/ethnic minorities in the police and no RAE at all. According to the authorities, this is because the RAE applicants have so far not met the educational requirements. Other candidates from national/ethnic minorities have failed the psychological tests for entry to the police. This was the case for 27 Bosniacs in 2009. The authorities also stated that there is little interest in joining the police from persons belonging to national/ethnic minorities, even in regions where the minority population constitutes the majority. In ECRI's view, it is important to ensure that the composition of the police reflects the diversity of the population.
126. ECRI recommends that the authorities increase their efforts to ensure that there is no police impunity. It is also important to equip the police with the skills, including language skills, to increase their effectiveness by enhancing communication with and gaining the trust of minority groups. Therefore, ECRI invites the authorities to consider ways to increase the recruitment of national/ethnic minorities in the police.

## **VII. Monitoring Racism and Racial Discrimination**

127. As noted in various sections of this report, there is no systematic collection of disaggregated ethnic data in Montenegro. The authorities have stated that accurate figures cannot be obtained because people are not asked to identify their national/ethnic origin and generally do not wish to do so. This seriously hinders effective policy development and implementation in different fields. It also prevents the proper implementation of certain constitutional provisions, such as authentic representation of “minority national communities” in Parliament. Data from the last census in 2003, at the time of the State Union of Serbia and Montenegro, no longer reflects the current composition of the population. A Law on Census was adopted in July 2010 and a new census was conducted in April 2011.
128. ECRI is aware that the issue of ethnic data collection is a sensitive matter in Montenegro and presents certain difficulties. While some people may be reluctant to identify their ethnic affiliation, others may not identify with any single national/ethnic group, or may identify with more than one. It is important, therefore, that people are reassured that the collection of such data need not present a threat for human rights if the principles of anonymity, informed consent and voluntary self-identification are respected.
129. Informed consent involves a clear appreciation and understanding of the facts, implications and future consequences. The public should be made aware that accurate data on the numbers and living conditions of national/ethnic minorities would assist the authorities in the planning of services, as well as contribute to achieving full respect of certain rights granted under domestic law, including authentic representation in Parliament, proportionate representation in public services, state authorities and local self-government bodies, and a fair allocation of funds to the Minority Councils. At the same time, it should be clear that nobody is obliged to disclose any information she/he considers sensitive.

130. ECRI recommends that the authorities establish a monitoring system to enable the collection of relevant information broken down according to categories such as national/ethnic origin, language, religion and citizenship in different areas of policy, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.

### **VIII. Education and Awareness Raising**

131. Primary school has the subject civic education which is compulsory. It deals with differences and peaceful living together. According to the authorities, teachers are also trained in combating prejudice. ECRI considers that, in order to have as meaningful an impact as possible, this course should be developed also for pupils at secondary school.

132. ECRI encourages the authorities to integrate compulsory civic education, including human rights, tolerance and non-discrimination, into the secondary school curriculum and train teachers accordingly.

133. The Constitution guarantees, for persons belonging to national/ethnic minorities, the right to education in their own language and the right to have included in the curriculum their history and culture. As regards the application of these rights, ECRI refers to the relevant reports of the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee of Experts on the European Charter for Regional or Minority Languages which have been mentioned above.

134. As noted in the section on Education, teachers have the possibility to freely design 20% of the curriculum. ECRI regrets that little is made of this opportunity, mainly, it seems, because teachers seldom speak minority languages or have adequate knowledge about different minority cultures. ECRI considers that it would be helpful for teachers to be able to follow a basic syllabus for this part of the curriculum aimed at raising awareness amongst pupils of the rich cultural diversity of the country.

135. ECRI encourages the authorities to consider establishing a basic syllabus on the history and culture of the six national/ethnic minority communities in Montenegro and providing materials, in close collaboration with the Minority Councils and the Centre for Minority Culture.

136. ECRI notes that little attention has been given in Montenegro to awareness raising concerning the issues within ECRI's mandate. While this may not appear to be a pressing need - Montenegro is often described as a model of good inter-ethnic relations - ECRI believes that efforts should be made to maintain and consolidate this achievement, as well as to raise awareness among the general population of those areas where inequalities have been highlighted.

137. ECRI recommends that the authorities organise a large-scale campaign for tolerance and non-discrimination addressed to society at large and focusing especially on the Roma, Ashkali and Egyptian (RAE) population.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations<sup>21</sup> for which ECRI requests priority implementation from the authorities of Montenegro are the following:

- ECRI recommends that the authorities strengthen the initial and in-service training provided to police, lawyers, public prosecutors and judges on issues related to equal treatment and non-discrimination, the criminal law provisions in force against racism and racial discrimination and on how to recognise the racist motivation of an offence.
- ECRI strongly recommends that the Montenegrin authorities, after full and open consultations with the people concerned, find standard accommodation all around the town or the country for the Roma, Ashkali and Egyptian (RAE) inhabitants of Konik, and close down the camp.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

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<sup>21</sup> ECRI had made a third specific recommendation concerning the adoption as soon as possible of the new Law on the Protector of Human Rights and Freedoms in order for the Law on the Prohibition of Discrimination to be applied. However, in the time between the drafting of this report and its adoption, the Law on the Protector of Human Rights and Freedoms was adopted. ECRI considers that this recommendation has been implemented.





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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Montenegro**

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Montenegro on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, unless otherwise indicated, only takes into account developments up until 22 June 2011, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.





**GOVERNMENT OF MONTENEGRO**  
**Ministry for Human and Minority Rights**

Dear ECRI representatives,

I hope you share my opinion that we have achieved a good communication and cooperation while you were working on the monitoring of Montenegro in the field of racism and intolerance. I also hope that other stages of our cooperation will be marked by the same spirit of cooperation, respect and understanding.

I would also like to thank you for such an exhaustive analysis of the comments and remark to the Draft ECRI Report that we submitted after we received the Draft in July. We have noticed that most of our comments have been taken into account which is of extreme importance not only for ensuring that the Report contains accurate facts but also because that will impact willingness to take ECRI recommendations as imperative in solving the problems you indicated to in your Report.

In that respect, using the opportunity of the special Appendix to the final Report, I would like to add several minor interventions, the need of which is based on the facts I had the opportunity to check myself

- In the beginning (in the Summary) the Report says that RAE population face obstacles in access to employment, even when they are academically qualified  
In relation to this I want to provide you with the data that out of 4 Roma with university degree, three are employed - 1 as an adviser to Prime Minister, while only one Roma person with university degree is still unemployed.
- As for the recommendation in the field of education (new paragraph 40), which reads that Albanian language is the only minority language used in teaching process, I want to say that other minority languages are, actually, the languages with the same root described in the Charter on Regional and/or Minority Languages as the languages which are mutually understood. The subject in all schools has the title: Montenegrin-Serbian, Bosnian and Croatian Language, which means that all of these languages are equal in the whole education system.
- New paragraph 49 reads that the school in Konik works for only one hour a day. However, this school works according to the curriculum mandatory for all schools in Montenegro.
- As for the recommendation in the end of the report, under new number 140, I wish to inform you that the Ministry for Human and Minority Rights has organized a large media campaign against discriminatory and intolerant treatment in the whole territory of Montenegro. The campaign lasted from May to October this year and it included:

broadcasting TV spots in all Montenegrin TV stations (1045 broadcastings of the promotion spot of 60 seconds, i.e. 62700 seconds), advertising in all daily papers in Montenegro in the days when circulation is the highest, placing billboards and city lights (64 pieces) in most frequent roads and locations in Montenegro.

This activity of the Ministry is defined as a continuous activity and thus we are already planning a new cycle of campaign and education for next year with the view to creating as tolerant environment as possible and to promoting anti-discriminatory behaviour.

If you consider the above comments of importance for assessment of the situation in the field of racism and intolerance, please accept them as an Appendix to the Final Report.

Looking forward to our good cooperation in the future  
Sincerely

NATIONAL LIAISON OFFICER  
GOVERNMENT OF MONTENEGRO  
Blanka Radošević - Marović