



MONTENEGRO  
THE GOVERNMENT OF MONTENEGRO  
The Ministry for the Protection of Human and Minority Rights

STRATEGY FOR MINORITY POLICY  
*The Policy of the Government of Montenegro in the Area of Respect and Protection of  
Minority Rights*

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## Introductory Remarks

**Nowadays the number of minority groups is 22 times bigger than the number of internationally recognized states.** The fact that every ethnic community may not have its own state emphasized the need to build the system of international protection of minorities.

Beginnings of such protection date from the nineteenth century, but at that time it was only concerned with religious minorities. Frequent conflicts, including wars as well, resulting from unresolved ethnic issues raised the concern for the position of minorities and their protection at the end of the nineteenth and particularly at the beginning of the twentieth century. Since then the system of minority protection has undergone various phases dependant upon general historical and political developments worldwide. Until the Second World War that was exclusively responsibility of states which was not proved to be functional, very often laying the foundations for expulsion of minorities from some territories.

Establishment of the UN gave rise to a new period in international legal protection of minorities with the rights of ethnic groups being exercised in the framework of the respect for fundamental rights and freedoms. However, neither did this model for the minority protection prove to be completely functional. Enhancement of the system of minority protection was subject to the continuous harmonization within and between different international organizations. Many of the adopted documents failed to resolve numerous dilemmas, while the universal key or model for resolution of ethnical issues was not found. Furthermore, generally accepted definition of a minority is still non-existent, while international standards in the area of the protection of minorities remain considerably fluid and expansive leaving the room for multi-faceted interpretation. Despite being the first legally binding international document in the area of minorities, the contents of the Framework Convention for the Protection of National Minorities of the Council of Europe is more a recommendation than a binding act. Therefore, **accountability for the arrangement of such important policy in the legislation of a specific country continues to raise a significant challenge for modern democracies.**

**Montenegro**, as an independent and internationally recognized state, being a UN member, and following its internationally assumed obligations arising from the membership in international organizations and ratification of international treaties, particularly the Stabilization and Association Agreement with the EU, is obliged to design the Strategy for Minority Policy as a fundamental planning document which defines the policy of the Government of Montenegro in the area of the respect and protection of the rights of minorities based on constitutional provisions and legal arrangements contained in **the Law on the Minority Rights and Freedoms.**

Following comparative legal international standards, **the Strategy for Minority Policies** will define the measures for implementation of the Law on the Minority Rights and Freedoms and enhancement of the living conditions for minorities in general, that is

measures to be undertaken by public authorities in the implementation period of the document.

## I Minority Protection in International Law

### 1. Concept, Name and Definition of Minorities

Despite an evident rise in the number of international legal acts and other documents partially or entirely concerned with the protection of minorities, there is not a uniform approach to the concept itself, that is to the name for minorities which, in the most general sense, may be defined as *those groups of citizens which are numerically less represented than the majority population, with distinctive attributes with regard to the rest of the population, such as language, national or ethnic background or origin, religion and similar characteristics*. Though some minorities, having a distinctive attribute, primarily language or religion put forward the solution themselves (*linguistic*, or *religious* minorities), there still remains a question as to how to name those minorities characterized by a set of such elements (language, origin, customs and the like), that is something which is generally termed an **ethnic particularity**.<sup>1</sup>

Depending on the term chosen by the **lawmaker** in each specific country, it is possible to either reduce or expand the circle of groups, that is persons that are entitled to seek defined minority protection.

**Comparative experiences** reveal that the term *minority* is frequently insufficient. Even though the term clearly underlines minority attribute of the group concerned (the fact that it lives in minority in a specific society or specific region), it still fails to define it more closely. Modern practice frequently uses terms such as **national minorities**, **ethnic minorities** and **ethnic minority communities**. The term *ethnic minorities* which is very often used in international documents and other relevant sources has a sufficient scope. To be precise, on one hand the term includes only those minorities that are distinctive from the majority population by its ethnic particularities, while on the other hand it refers to all such groups of citizens since (unlike the term *national minorities*) it does not insist on them being a part of a nation.<sup>2</sup>

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<sup>1</sup> Source: Dr Krivokapic Boris, Protection of Minorities: Historical Development, Fundamental Issues and Protection within the scope of the UN, The Ministry for Human and Minority Rights of Serbia and Montenegro, Institute of Comparative Studies, Official Gazette of Serbia and Montenegro, Građevinska knjiga, Belgrade, 2004, p. 186

<sup>2</sup> Nation – ethnic community comprising large groups of individuals mutually connected with the unity of territory, economic life, unity of culture and unique language based on which they develop other various common attributes (psychological and other). Being the highest degree of ethnic community, the nation evolved from the peoples at the inception of capitalism. At the time, national awareness was beginning to grow as it was much more powerful than the awareness uniting individuals in the peoples, together with emergence of the tendency to establish national states based on the principle *one country-one nation* (the

Since **international law fails to provide a generally accepted definition of minorities**, the states may, as they wish and according to their circumstances and primarily interests, define what groups they will consider the above mentioned groups.

In order to meet the needs of internal legislation and practice of some countries, the most functional solution is frequently that of enumerating all the minorities in a relevant legal act, preferably **Constitution**<sup>3</sup> of a country. That is the most simple and clearest way to establish which minorities live in the state and who is entitled to the minority protection.

Finally, a critical decision for the lawmaker is a matter of *numerical presence* of that group of citizens and its ratio to the majority or total population, whereby **universal solutions and standards are still non-existent particularly in cases of small, multiethnic states**.<sup>4</sup>

## 2. Minority Protection

The nature of minority protection is focused on the provision of such conditions to minorities and their members in which they may live, survive and develop as individuals and appropriate groups with all their attributes without any barriers and pressures imposed.

In order to reach that goal, minorities are granted certain rights, some of them being material, the others procedural. The first ones take into account a set or a *catalogue* of adequate specific rights, while the second ones include mechanisms for the exercise of guaranteed rights.

All rights granted to the members of minorities – **minority rights**, may be divided as follows:

### 1. general human rights and freedoms (rights granted to everyone)

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principle itself is not consistently applied). (Legal Encyclopedia, Volume I, Modern Administration, Belgrade, 1985, p. 845)

<sup>3</sup> Preamble of the Constitution of Montenegro, paragraph 3 stems from *the determination that we, as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniacs, Albanians, Muslims, Croats and the others, are committed to democratic and civic Montenegro*;

<sup>4</sup> Conditions are much more favorable for the exercise of minority rights (for instance, opening of the school in mother tongue) if minorities live relatively compactly in the specific region in the country, instead of being dispersed throughout entire territory of the state concerned.

The situation is more complex in **small states**, which are occasionally **multi-ethnic communities** as well, i.e. states where according to the official census results none of the ethnic, religious or linguistic group forms the majority. It may be concluded from the aforesaid that the position that group concerned should represent numerical minority (below 50%) with regard to the total population of the state may be accepted as a general concept (Dr Krivokapić Boris, op. Cit. P. 232)

2. general human rights and freedoms guaranteed to the nationals of a country
3. protection against discrimination
4. special minority rights
5. the right to an efficient exercise of guaranteed rights, that is to reliable mechanisms of protection, including appropriate procedural rights

All general rights (recognized to everyone and those reserved for nationals of the country) may be divided as follows: a) **the first generation** (civil and political human rights such as the right to life, prohibition of torture etc. b) **the second generation** (economic, social and cultural rights, such as the right to work and labor rights, right to social security, right to education etc. and c) **the third generation** (so-called *rights of solidarity*, that is collective or common rights such as the right to economic, social and cultural development, right to free natural resources management, right to peace, right to environmental protection, right to communicate etc.)

**Prohibition of Discrimination** – discrimination means making a distinction and unequal treatment of persons based on certain racial<sup>5</sup>, national, sexual and other differences of the kind between them whereby some of them have been recognized certain rights, while the others have been partially or entirely denied those very rights as a result of the above mentioned differences. Therefore, one may speak about racial, national, religious and other similar kinds of discrimination.

### 3. Special Minority Rights (the catalogue of protected minority rights)

**The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)** as the most important universal international document from this area establishes obligation of the state to protect existence and national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, encourage conditions for the promotion of that identity and adopt appropriate legislative and other measures to achieve those ends (Article 1).

Article 2 guarantees the following **rights** to the persons belonging to minorities concerned:

- the right to enjoy their culture
- the right to practice their own religion
- the right to profess religion and use their own language

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<sup>5</sup> Contemporary science denies existence of human races, despite expansion of that concept in practice as they are regularly mentioned in almost all the instruments that guarantee prohibition of discrimination (Op. cit. p. 267)

- the right to participate effectively in cultural, religious, social, economic and public life
- the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live
- the right to establish and maintain their own associations
- the right to establish and maintain free and peaceful contacts with citizens of other states to whom they are related by national or ethnic, religious or linguistic ties.

Though the following Articles of the Declaration (Articles 3-5) also refer to some other rights of persons belonging to minorities, the aforementioned rights form the essence of **the corpus of minority rights**.

The abovementioned *catalogue* of minority rights from the Declaration is more comprehensive than that guaranteed by the most relevant international legal document of universal importance – **the International Covenant on Civil and Political Rights**. Article 27<sup>6</sup> of the Covenant establishes, though negatively, (that they may shall not be denied) merely the three rights. It is about the rights of persons belonging to ethnic, religious and linguistic minorities to 1. enjoy their own culture 2. profess and practice their own religion and 3. use their own language.

By far, the largest list of minority rights is contained in the most important, relevant regional legal document today - **the Framework Convention of the Council of Europe for the Protection of National Minorities (1995)**.

Based on relevant international instruments, these rights may be classified as follows:

1. the right to survival
2. the right to identity
3. the right to equality and non-discrimination
4. the right to the use of mother tongue
5. special rights in education area
6. the right to enjoy one`s own culture and tradition
7. the right to effectively participate in life of the community
8. the right to international contacts and cooperation and
9. the right to effective protection of guaranteed rights<sup>7</sup>

The scope of minority rights depends on specific circumstances and nature of the document defining such rights while that document is continuously supplemented with new rights.

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<sup>6</sup> Article 27 of the Covenant: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language

<sup>7</sup> Op. cit., p. 275



#### 4. Comparative Legal and International Standards

The area of minority rights, particularly **legal systems and practice of modern states**, necessarily raise the question as to whether there are any shared grounds, that is something which might be regarded as *comparative legal standards*. The answer to that question so far has been negative. There are no **unique arrangements and treatments in various countries**, but also in the majority of states various arrangements apply to various ethnic minorities, while in some states – various arrangements are applicable to the persons belonging to the same minority, depending on the area where they live.

Though one may often hear about meeting the so-called international standards in various areas, including this one, when minority rights are concerned it may be stated, strictly speaking, that **actual international standards perceived as arrangements or models to be universally accepted and mandatory for all the states are still non-existent**. What has been produced so far is a set of partially elaborated arrangements in various international documents of the UN, OSCE, Council of Europe and others.

**International legal standards for the protection of minorities**, either regional or European as the most developed ones, or universal, lay the foundations for governing of this sensitive and complex matter internally, in line with Montenegrin constitutional arrangements. Recommendations and other documents from the corpus of the so called **soft law** arising from efforts of international organizations and initiatives, are not rigorously legally binding, but still they are authoritative in ethic and political terms and represent international standards for governing of the protection of minority rights. These postulates serve as a basis for this **Strategy** which is a concrete planning policy for implementation and enhancement of the protection of minority rights.

Having constantly in mind that states are the ones that make ultimate decisions about the protection of minorities – starting from whether they recognize the status of a minority, prescribing of certain rights by law and establishment of the scope of rights laid down in these provisions, to whether they will put in place developed internal mechanisms for the provision of guaranteed rights – including the fact that willingness of states in modern conditions is narrowed down by necessity of cooperation and integration, the Strategy underlines the need to implement the broadest possible catalogue of minority rights, with full observance of international standards.

#### 5. Mechanisms of Protection

Article 1 of the Framework Convention for the Protection of National Minorities states that protection of minorities and freedoms of persons belonging to those minorities forms an **integral part of international protection of human rights**. It means that mechanisms for the protection of minorities may be related with certain general international instruments serving to protect general human rights. In addition,

international level also includes a set of special procedures and mechanisms for the protection of minority rights. Finally, concrete states achieve protection of minorities by implementing both, general mechanisms and specific ones applicable particularly for minorities and persons belonging to them.

### 5.1. Internal Mechanisms

**Internal legal mechanisms** are laid down by the Constitution and relevant regulations which establish terms and conditions of their activation, procedure, consequences etc. To be more precise, protection may be achieved by means of an **administrative procedure** (the right to seek intervention of an administrative body, such as the police, the right to lodge appeal to a higher administrative body against an illegal act of a lower body etc.), **court proceedings** (criminal proceedings, civil proceedings, administrative proceedings), **constitutional judiciary** (assessment of the constitutionality of relevant regulations, acting upon constitutional complaints and the like), certain **controlling powers of the Parliament** (work of various parliamentary committees, interpellations and the like) and other means.

**The most frequent mechanisms for special additional protection are** the following: establishment of a separate body that would be concerned with the protection of minority rights (Ombudsman for Minorities), establishment of the Minority Council on the central government level and similar bodies that would ensure complete coordination between public authorities and minority communities, provide that minorities have some kind of a direct representation in the Parliament independently from the results of elections, establishment of a separate Ministry responsible for minorities and other instruments.

One of effective mechanisms for minority protection is incorporation of some offences committed on the basis of ethnic, national, religious and other grounds in the Criminal Code (such as genocide, inciting hatred based on ethnic, national, religious and other grounds, discrimination on such grounds etc.).

Finally, provision of effective mechanisms for the protection of human rights (including rights of minorities) is not only a matter of willingness of the state concerned. Many relevant international treaties not only establish the scope of protected rights and define specific international monitoring mechanisms, but also clearly require from the Member States to undertake effective measures internally (International Covenant on Civil and Political Rights).

### 5.2. International Mechanisms

**A. International Mechanisms**, established by special international treaties or resolutions of certain international organizations are the following:

1. **Country Reports** - regular reports of countries about how assumed obligations are fulfilled in the area of minority protection, which are submitted to the special international supervisory bodies (committees), that pass decisions on establishing violation of human rights<sup>8</sup> and may require from a specific country to refrain from such practice in the future, or undertake appropriate measures aimed at enhancing current situation. Reports are a good method for the control of assumed obligations since on one side they inform international bodies about the conditions in a specific country, while on the other side the need to prepare reports constantly reminds the Government of the state concerned of its assumed obligations.<sup>9</sup>
2. **Communications from other Countries** – international treaties are fundamental and most important sources of international law, including its part related to minorities. By becoming signatories of such agreements, countries assume relevant obligations primarily to other state parties of the treaty, that is one to another (others). Accordingly, if some of the countries violate the treaty concerned, other signatories are authorized to react appropriately and to require from the country to be held accountable for not having fulfilled assumed contractual obligations (Article 41 of the International Covenant).
3. **Proceedings before International Courts** – supreme judicial authority of international community is the International Court of Justice which is a main UN judicial body established by the UN Charter. Its main role is to resolve disputes between states and give advisory opinions on legal matters arisen by the competent UN bodies and international organizations. The Court, where only states may appear as parties, is competent to resolve all the disputes initiated by parties, on condition that both parties to the dispute accept its jurisdiction. Resolution of disputes before international courts is also prescribed by some other relevant documents. For instance, under Article 33 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) amended by the Protocol no. 11, any High Contracting Party may refer to

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<sup>8</sup> For instance, the UN Committee for Human Rights was established by the International Covenant on Civil and Political Rights. Article 40 of the Covenant prescribes obligation of the States Parties to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant, and on the progress made in the enjoyment of such rights.

Article 25 of the **Framework Convention for the Protection of National Minorities of the Council of Europe** prescribes a similar obligation for State Party to transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

Articles 15-16 of the **European Convention on Regional and Minority Languages** (1992) also defines obligation of the State to present periodically to the Secretary General of the CoE a report on their policy pursued and on the measures undertaken in implementation of the Charter.

<sup>9</sup> In order to have the most precise and complete view of the state of art, responsible international bodies nowadays often resort to the mechanism which include requiring of reports from sources other than the Government, particularly specialized NGOs (such reports are usually referred to as alternative or **shadow reports**).

the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

4. **Communications from Individuals and Groups** – recently there has been an increasing number of international treaties prescribing the right of an individual and groups to initiate some kind of a quasi-judicial proceedings before relevant international body in order to protect their rights. One of the most important proceedings initiated upon communications of individuals is prescribed by the Facultative (Optional) Protocol to the International Covenant on Civil and Political Rights (1966).<sup>10</sup> In addition, Article 14/1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966) states that a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. There is also a precise procedure under the Resolution 1503 of the UN Economic and Social Council (ECOSOC, 1970) which also falls under the competence of the Human Rights Committee, i.e. authorized Sub-Commission on the Prevention of Discrimination and Protection of Minorities. There are also procedures defined under the UNESCO for the areas of education, science, culture and protection of minorities and a range of other procedures.
5. **Court Proceedings Initiated by Applications of Individuals** – sanctioning of international criminal acts is entrusted with the permanent International Court of Justice which was established by the Rome Statute and *ad hoc* tribunals (Rwanda, former Yugoslavia). Furthermore, the Convention for the Protection of Human Rights and Fundamental Freedoms and amended Protocol no. 11 established the European Court for Human Rights<sup>11</sup> whose jurisdiction extends to all the cases concerned

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<sup>10</sup> States Parties to the Covenant may, where appropriate, accept the Protocol by which they simultaneously recognize the competence of a special international body-Human Rights Committee from Article 28 of the Covenant to receive and consider communications lodged by individuals that fall under the competence of the State Party, claiming to be victims of violations by the State Party of any of the rights set forth in the Covenant. This means that this kind of protection may be sought on the basis of violation of a famous Article 27 and some other relevant provisions of the Covenant that are important for the position of minorities.

<sup>11</sup> The Convention stipulates that the Court may deal with the matter after all domestic remedies have been exhausted according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken. Judgments of the court are binding for the parties, while execution of the judgments is supervised by the Committee of Ministers. Judgments of the Court may not be challenged by an appeal. It may be concluded from the aforementioned what the advantages of this type of protection mechanism are. It represents real court proceedings before an impartial international body, under an appropriate procedure guaranteeing equality of parties and objectivity of the decision. However, the weakness of the procedure is the fact that it has not been widely accepted, and even its acceptance has resulted from the free decision of the states concerned. Therefore, there is no a generally binding judiciary that dissatisfied individuals may address, such possibility exists only when the state against which application has been lodged has accepted a relevant international treaty establishing international judicial body with powers to receive and consider applications of individuals under the European Convention on Human Rights (op. cit., p. 356-359).

with the interpretation and implementation of the Convention and the Protocols thereto, that are referred based on Articles 33 (International Treaties), 34 (Individual Applications) and 47 (Advisory Opinions).

6. **Other Procedures** – for instance, examination procedure from Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**B. Legal - Political and Other Mechanisms** – comprise a set of measures and procedures serving to verify the condition of human rights (in this case: minority rights) in a country and, where necessary, to exert certain influence on the country. For instance, it is well known that in the event of violation of minority rights various international organizations may exert some forms of political and other pressure on a state concerned and, where possible, impose certain sanctions such as denial of assistance, restriction of membership rights and the like.

## **6. UN and Minority Protection**

### **6.1. Mechanisms of Protection Based on the UN Charter**

Other than the United Nations bodies (the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and Secretariat) that are, in addition to their relevant powers, involved in the minority protection just as part of their often prevailing duties, within the UN system there is a number of specialized bodies and authorities dealing with human rights, of which some are engaged predominantly in minority rights. The majority of them operate under the auspices of the Economic and Social Council (ECOSOC). Among its ancillary bodies, particular importance is assigned to the Human Rights Committee and the Sub-Commission on the Promotion and Protection of Human Rights, working group for minorities, various rapporteurs and working groups, the UN High Commissioner for Human Rights and others.

### **6.2. The UN Documents**

#### **Main Documents**

1. The UN Charter (1945)
2. The Universal Declaration of Human Rights (1948)
3. The International Covenant on Economic, Social and Cultural Rights (1996)
4. **The International Covenant on Civil and Political Rights /CCP(1966)**
  - 4.1. General Comment of the Human Rights Committee 15(27)c/1986 on the Position of Aliens under the Covenant (1986)

- 4.2. General Comment of the Human Rights Committee on Article 26 of the Covenant (1989)
- 4.3. General Comment of the Human Rights Committee on Article 27 of the Covenant (1994)
- 4.4. Optional Protocol to the International Covenant on Civil and Political Rights (1966)
5. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistics Minorities (1992)

### **International Treaties Concluded under the UN Auspices:**

1. The Convention on the Prevention and Punishment of the Crime of Genocide (1948)
2. The Convention relating to the Status of Refugees (1951)
3. The Convention relating to the Status of Stateless Persons (1954)
4. ILO<sup>12</sup> Convention, no. 111 relating to the Discrimination in Employment and Occupation (1951) and ILO recommendation no. 111 (1958)
5. UNESCO Convention on Fighting against Discrimination in Education (1960)
6. ILO Employment Policy Convention no. 122 (1964)
7. International Convention on the Elimination of All Forms of Racial Discrimination (1965)

General Recommendation no. 8 of the Committee on the Elimination of Racial Discrimination (CERD): Identification with a Particular Racial or Ethnic Group (1990)

General Recommendation no. 27 of the Committee on the Elimination of Racial Discrimination (CERD) on Discrimination against Roma (2000)

General Recommendation of the CERD on Descent Based Discrimination (2002)

8. International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)
9. ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)
10. UN Convention on the Rights of the Child (1989)
11. International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (1990)
12. Rome Statute of the International Criminal Court (1998)

### **Documents of the UN General Assembly**

1. Resolution 217 C III *Fate of Minorities* (1948)
2. UN Declaration on the Elimination of All Forms of Discrimination (1963)
3. UN Declaration on Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief (1981)
4. UN Millennium Declaration (2000)

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<sup>12</sup> International Labor Organization

### **Other Relevant Documents of the UN and its Specialized Agencies:**

1. UNESCO Declaration on Race and Racial Prejudice (1978)
2. Declaration on the Principles of Tolerance, UNESCO (1995)
3. Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities – Report of the UN Secretary General (2000)
4. UNESCO Universal Declaration on Cultural Diversity (2001)
5. Resolution 2002/57 of the Human Rights Committee (2002)
6. Resolution 2002/16 of the Sub-Commission on the Promotion and Protection of Human Rights (2002)

### **Special Mechanisms for International Supervision of Communications**

1. ECOSOC Resolution no. 1235 (1967)
2. ECOSOC Resolution no. 1503 (1970)
3. ECOSOC Resolution no. 2000/2 (2000)
4. Decision of the UNESCO Executive Board 104 EX/3.3. (1978)

We have already underlined that Article 27 of the International Covenant on Civil and Political Rights /CCP/ states that *in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

It may be concluded from the aforementioned that **universal international legal protection of minorities is quite modest**. Apart from Article 27 of the CCP which explains universal legal protection, there is no any other legally binding source. In fact, this is a comprehensive provision guaranteeing persons belonging to minorities to enjoy their own culture, profess religion and use their own language individually and together with other members of their group. The provision is the basis for declaration and bilateral agreements governing minority protection. In addition, the Strategy is based on all the provisions of the CCP (Articles 2-3 and 26) on prohibition of discrimination which also refer to minorities.

**Obligations of the state** in terms of the protection of minority rights are of positive and negative nature. Even though Article 27 of the CCP is expressed with negative terms, it actually establishes existence of the right to minority identity and requires that such right may not be deprived. Accordingly, the Member State shall ensure that existence and enjoyment of such rights shall be protected against any deprivation or violation. Positive measures of protection are needed specifically in that framework. Article 27 means that the state needs to act to protect its goals. The state must undertake appropriate measures (establish cultural and educational institutions, support efforts in the construction of facilities for religious organizations, provide funds for the public use of minority languages). Passive position of the state is impossible in that respect as it would cause non-implementation of guaranteed rights to life.

Imperative legal regulations are the following: International Convention on the Elimination of All Forms of Racial Discrimination, UN Convention on Elimination of Discrimination against Women and UNESCO Convention against Discrimination in Education.

UN Declaration from 1992 which is dedicated to minority protection has the form of a resolution-therefore, it is not strictly legally binding. However, the Declaration is the source for resolving this matter as it is a very important legal act for interpretation of international standards applicable to minority rights.

The Strategy is adopted in compliance with certain general international conventions which partially and in some provisions provide special protection guarantees for minorities. Those are the following: ILO Convention no. 107 and 111 (prohibition of discrimination related to the right to work and labor rights), Convention on the Elimination and Punishment of the Crimes of Genocide and Convention on Rights of the Child.

In addition to the provisions of the CCP, one should also bear in mind provisions of the Covenant on Economic, Social and Cultural Rights (which impose positive obligation to the countries-Articles 13-15) as the state needs to undertake certain measures in order for rights in this area to be exercised. In addition, the Strategy relies on relevant provisions of UNESCO documents concerning the need of the state to support cultural development which is particularly important for conservation and promotion of minority culture.

Obligation imposed on states with this Article is therefore not only *negative* but it also implies **obligation of the states to work actively** to fully implement Article 27 and other international standards.

## 7. Protection of Minorities in the Framework of the Council of Europe<sup>13</sup>

Council of Europe (CoE) is European regional international organization established by the CoE Statute signed in London in May 1949. Main goals of the CoE are the following: protection of human rights, pluralistic democracies and rules of law, awareness raising and encouragement of the development of cultural identity and diversity in Europe, seeking to find solutions to the problems European society is facing, including discrimination of minorities, xenophobia, intolerance, environmental protection, human cloning, HIV, intoxicating drugs, organized crime etc.; provision of assistance in consolidation of democratic stability in Europe by supporting political, legislative and constitutional reform.<sup>14</sup>

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<sup>13</sup> Source: Dr Krivokapić Boris, Protection of Minorities in Regional Frameworks through Bilateral Agreements, the Ministry for Human and Minority Rights of Serbia and Montenegro, Institute of Comparative Law, Belgrade, 2004, p. 25-71

<sup>14</sup> [www.coe.int](http://www.coe.int)



**Principal bodies of the CoE** are the Council of Ministers, Parliamentary (Advisory) Assembly and Secretariat. The Congress of Local and Regional Authorities of Europe established as an advisory body in 1994 should also be added to the list.

### **7.1. Bodies of the CoE of Particular Importance for the Protection of Human and Minority Rights**

1. **European Court of Human Rights (ECHR)**, permanent judicial body established by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, European Convention on Human Rights) with headquarters in Strasbourg.
2. **European Commission against Racism and Intolerance (ECRI)**, whose statute was adopted by the Resolution of the Committee of Ministers in June 2002.
3. **European Commission for Democracy through Law (so-called Venice Commission)** was established by the Committee of Ministers of the CoE in March 1990 as an independent advisory body made predominantly of scientists in the area of constitutional and international law, judges of supreme or constitutional courts, members of national parliaments and other distinguished persons. It adopts: opinions, reports and recommendations.
4. **CoE Commissioner for Human Rights** is an institute adopted by the Resolution of the Committee of Ministers in May 1999 as a non-judicial institution established with the aim of promoting, educating, awareness raising and exercising of human rights defined by the CoE mechanisms of human rights. The Commissioner may within the framework of its powers give recommendations, opinions and reports.
5. **Contractual Bodies** – a set of expert bodies defined by various contracts, such as the Committee of Ministers, from each of the member states, under Article 17 of the European Charter for Regional and Minority Languages (1992).

### **7.2. The Most Relevant Documents of the Council of Europe of Importance for Minority Protection**

1. **Convention for the Protection of Human Rights and Fundamental Freedoms (1950)**, also known as the European Convention on Human Rights, amended with 13 Protocols (adopted from 1952 until 2002) which define certain material, legal, procedural and other matters. Article 14 of the Convention generally prescribes prohibition of discrimination on any grounds including, among other things, race, language, religion, national background and particularly belonging to a national minority.
2. **European Charter for Regional and Minority Languages (1992)** - idea of the preparation and adoption of a separate international agreement within the CoE framework dedicated to the protection of regional and minority languages emerged from the fact that due to various factors, primarily historical, many European countries have in their territory certain regionally settled autochthonous

groups of population that speak a language different from that spoken by the majority population. The Charter contains a definition of regional and minority language, obligations that may be assumed by State Parties, goals and principles to be used by states in creation of their policies, legislation and practice.

The third part of the Charter contains a set of concrete provisions about the position of these languages in various areas of the community life (education, courts, media, culture, economic and social life, transnational exchange, Articles 8-14)<sup>15</sup>, while the fourth part of the Charter contains provisions for its implementation.

3. **Framework Convention for the Protection of National Minorities** (1995) – is not concerned with collective rights of minorities, but rights of persons belonging to those groups. Since these individual rights are exercised by implementation of principles and objectives on national level set forth in the Convention through the relevant legislation and appropriate measures of the policies of Governments, the states may at their own discretion design legislation and policy measures tailor made for their specific conditions. For that reason the name of this document is *Framework Convention*. Therefore, selected approach leaves a certain degree of freedom to the states in implementation of the goals they undertook to achieve which ensures that in achievement of the goals hereof and under the principles set forth in the Convention the states take into consideration their own specific circumstances. States that ratified the Convention are obliged to present to the CoE Secretary General their first report in a period not exceeding one year which contains full information about legislative and other measures undertaken to materialize principles set forth in the Convention. After that, the state is obliged to periodically present its reports every five years. The Committee of Ministers may also require *ad hoc* reports. Based on the opinion, the Committee of Ministers adopts conclusions on implementation of the Convention and, where necessary, it may also adopt certain recommendations.
4. **Other Documents** – other contractual acts of the CoE bodies, particularly recommendations of the Parliamentary Assembly concerning minority protection, or some special matters important for minority protection and position of certain minorities. Recommendations of the Committee of Ministers are particularly important (such as those on education of Roma children, hate speech etc.)

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<sup>15</sup> As regards the third part of the Charter – obligations assumed by State Parties- State Parties are obliged in relation to each of the languages defined at the time of ratification, acceptance or endorsement, to assume obligation to apply at least 35 paragraphs and sub-paragraphs selected among the Articles of that part, including the minimum of three to be selected from Articles 8 and 12 and one from Articles 9, 10, 11 and 13. To put it simply, each State Party may, in its ratification instrument, which affirms its consent to be bound by the Charter, define those regional and minority languages which the third part applies to. Flexibility of assuming contractual obligations which is made possible in this way leaves the room for taking into account of all the existing specificities in various parts of Europe in terms of different languages. This provides room for the states to adapt their obligations under Charter to their own conditions. **Overview of Ratifications and Statements** in relation to the languages which the third part of the Charter applies to is available at the <http://conventions.coe.int>

## **8. Organization for Security and Cooperation in Europe (OSCE) and Minority Protection**

OSCE (1975) is concerned with three **dimensions of security**: military-political, economic-environmental and human. **Its decisions are not legally binding, but still exert strong ethical and political power.** Main institutions and structures of OSCE are the following: meetings of the Heads of States or Governments (summits), Ministerial Council (central decision making and management body), High Council, Economic Forum, Permanent Council, Forum for Security Cooperation, current presidencies (Foreign Minister of the country presiding), Troika (Foreign Ministers of previous, current and future presidency), personal representatives (of presidency, for specific cases, during resolution of crises and conflicts), Parliamentary Assembly (with more than 300 members from participating countries; it considers matters and adopts resolutions and recommendations of importance for the activities of OSCE), Secretary General, Secretariat, other bodies and institutions. In practice, important role in protection of minorities is also assigned to the **Office for Democratic Institutions and Human Rights** (ODIHR, 1990)<sup>16</sup> and **High Commissioner for National Minorities** (1992).

**Role of the High Commissioner** is to prevent conflicts by reacting at the earliest possible stage to the specific minority situations that might turn into conflict in the OSCE region thus contributing to the peace, stability and relations between States Parties. His/her work is characterized by the following attributes: independence, impartiality, cooperation and confidentiality (so-called silent diplomacy). In order for the Commissioner to complete his/her task, he/she is authorized to gather and receive information about national minorities, to visit States Parties and personally communicate with involved parties in order to obtain data at the first hand (he/she may also mediate), to assess the nature of tension and its consequences to peace and stability and other relevant issues.

### **Main Documents of the OSCE**

1. The Helsinki Final Act
2. Concluding Document of the Madrid Meeting KEBS (1983)
3. Concluding Document from Vienna Meeting KEBS (1989)
4. Document from the second Conference on Human Dimension KEBS (Copenhagen, 1990)
5. Charter of Paris for a New Europe (1990)

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<sup>16</sup> Main task of ODIHR is to facilitate contacts and exchange of data about elections in States Parties (1990), while in 1992 its mandate was expanded to include human rights and democracy. Today ODIHR undertakes four main types of activities: monitoring of elections through engagement of the long-term and short-term monitoring missions, support to the democratization process (building democratic institutions, and respect for human rights, strengthening civil society and rule of law through targeted projects and assistance programmes); the Office is a focal point for the issues of Roma and Sinti (Gypsies); in addition, the Office conducts monitoring aimed at early warning and prevention of conflicts by exercising control over fulfillment of assumed obligations by States Parties in relation with implementation of the OSCE human dimension; the Office also provides advisory services.

6. Report from the meeting of KEBS experts about national minorities (Geneva, 1991)
7. Document from the third meeting of the Conference on Human Dimension KEBS (Moscow, 1991)
8. The Helsinki Document KEBS (1992)
9. Document from the third meeting of the KEBS Council (Stockholm, 1992)
10. Document from the fourth meeting of the KEBS Council (Rome, 1993)
11. KEBS Summit in Budapest (1994)
12. Lisbon Document (1996)
13. Charter for European Security (Istanbul, 1999)
14. Istanbul Summit Declaration (1999)

#### **From Practice of the High Commissioner for Minorities:**

1. The Report on Roma (1993)
2. **The Hague Recommendations** regarding the education rights of national minorities (1996)
3. **Oslo recommendations** regarding the linguistic rights of national minorities (1998)
4. **Lund Recommendations** on the effective participation of national minorities in public life (1999)
5. The Report on linguistic rights of persons belonging to national minorities in the OSCE region (1999)
6. Report on the situation of Roma and Sinti in the OSCE Area (2000)

Activities of the OSCE High Commissioner for national minorities resulted in adoption of the abovementioned body of so-called *soft-law* documents – Recommendations from the Hague, Oslo and Lund and other numerous recommendations for minorities and involvement of media in the election process etc. which is a qualitative change in the mechanisms of implementation of the rights of national minorities. That lays foundations for adoption of arrangements in the Strategy as a policy for implementation of minority rights.

**The Hague Recommendations regarding the education rights of national minorities** from 1996 prescribes that education of minorities – particularly in their mother tongue – has become a priority since education is an extremely important element for the preservation and deepening of the identity of persons belonging to national minority. According to the Hague Recommendations, the relevant international obligations constitute international minimum standards, which is why they should not be interpreted in a restrictive manner. Where required, special measures should be adopted by States to actively implement minority language education rights. Decentralization of education system and involvement of the representatives of minorities, particularly parents, are treated as a specific condition for exercise of the right to education. It is recommended, among other things, that the curriculum include not only teaching in mother tongue, but also teaching of histories, cultures and traditions of minorities. Furthermore, members of

the majority should also be encouraged to learn the basics of the languages and cultures of national minorities so as to strengthen tolerance and multiculturalism.

The right to use mother tongue of national minorities in public and private life is elaborated in Oslo Recommendations regarding the linguistic rights of national minorities from 1998. Under the Recommendation, personal names, names of private entities, business enterprises, cultural associations shall be written in minority language as well. This obligation also refers to the local names and names of streets in areas inhabited by *significant numbers* of persons belonging to a national minority. Religion is also practiced in mother tongue. Nongovernmental organizations and associations established and managed by persons belonging to national minorities may use minority language. The same provisions are applicable to the media, but the recommendation is to give minorities a fair share of broadcast time in minority language in public electronic media and to provide access to international media. The use of minority language in public administration and public services is recommended to the regions inhabited by a significant numbers of persons belonging to national minorities following their expressed desire to do so. The Ombudsman Office and Human Rights Committee should allow the persons belonging to national minorities to use their mother tongue. Judicial authorities, particularly in criminal proceedings, should respect the right to the use of minority language. The same provisions are applicable to the prison administration.

**Lund Recommendations on the effective participation of national minorities in public life** from 1999 emerged from the need to shape the third most frequent problem-participation of national minorities- **into the form of recommendation to the states.** Exercise of this right to life represents an *essential part of peaceful and democratic society*. Two aspects of this right are of prime importance: participation in decision making and self-governance model.

- 1. Participation in Decision Making:** - states are recommended to ensure special representation of minorities in legislative bodies, Government, Ministries, participation in public service and publication of regulations of public services in minority languages.

**At the central level,** these solutions might include the following:

- **Special representation of national minorities** by, for instance, reserved number of seats in one or both chambers of Parliament or in Parliamentary Committees and other forms of guaranteed participation in legislative process
- **formal or informal understandings for allocating to members of national minorities** cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs
- mechanisms to ensure that **minority interests are considered within relevant ministries**, through, e.g., personnel addressing minority concerns or issuance of standing directives and

- **special measures** for minority participation in the civil service as well as the provision of public services in the language of the national minority.

**Elections** – States shall guarantee persons belonging to national minorities the right to take part in the conduct of public affairs, including the rights to vote and stand for office without discrimination. The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. The electoral system should facilitate minority representation and influence:

- Where minorities are concentrated territorially, **single-member districts** may provide sufficient minority representation
- **Proportional representation systems**, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities
- **Some forms of preference voting**, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation
- **Lower numerical thresholds for representation in the legislature** may enhance the inclusion of national minorities in governance
- **The geographic boundaries of electoral districts** should facilitate the equitable representation of national minorities

**Arrangements at the Regional and Local Levels** - States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of the central government. The structures and decision-making processes of regional and local authorities should be made transparent and accessible in order to encourage participation of minorities.

**Advisory and Consultative Bodies** - States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities.

2. **Self-Governance** – another form of participation of national minorities in public life, under Lund recommendations, is self-governance. Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance. It is essential that governmental authorities and minorities *recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.*

**Functions that are generally exercised by the central authorities include** - defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs. Other functions may be managed by minorities or territorial administrations or shared with the central authorities. Functions may be allocated asymmetrically to respond to different minority situations within the same State.

**Non-Territorial Arrangements** - Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities. The

issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities. Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names. Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures, or both. Minorities can determine and enjoy their own symbols and other forms of cultural expression.

**Territorial Arrangements** – local government may undertake a number of functions in order to respond more effectively to the concerns of minorities.

- Functions over which such administrations have successfully assumed **primary or significant authority** include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.
- Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.

## **Safeguards**

### **a) Constitutional and Legal Safeguards**

- **Arrangements for promoting participation of minorities in local governance** should be established by law.
- **Arrangements for promoting decision making of minorities** may be established by law or in some other appropriate manner.
- Arrangements adopted as constitutional provisions are normally subject to a higher threshold of legislative or popular consent for their adoption and amendment.
- **Changes to self-governance arrangements** established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both
- **Periodic review of arrangements** for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.
- The possibility of **provisional or step-by-step arrangements** that allow for the testing and development of new forms of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

**b) Remedies** – If a dispute is not resolved through consultations, agreements or some other alternative mechanisms, it is possible to resort to judicial resolution of disputes, such as judicial review of legislation or administrative actions, which requires that the State possess an independent, accessible, and impartial judiciary whose decisions are

respected. Additional dispute resolution mechanisms are also recommended, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions.

ODIHR – Guidelines to Assist National Minority Participation in the Electoral Process (Warsaw, 2001)

## **9. European Union Documents**

### **Main Documents:**

1. The Treaty on European Union (1992)
2. The Treaty Establishing European Community (1997)
3. Charter of Fundamental Rights of the European Union (2000)

### **Council of the European Union:**

1. Declaration against Racism and Xenophobia (1991)
2. Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on EU concerning action to combat racism and xenophobia (1996)
3. Declaration of the Council and representatives of Governments of Member States on respecting differences and combating racism and xenophobia (1997)
4. Council Directive 2000/78/EC establishing the principle of equal treatment of persons regardless of their racial or ethnic origin (2000)
5. Council Directive 2000/750/EC establishing general framework for equal treatment in employment and occupation (2000)
6. Council Decision 2000/750/EC establishing Community action programme to combat discrimination (2000)

### **Acts of the European Parliament:**

1. Resolution on the Community Charter for Regional Languages and Cultures and Charter of Rights of Ethnic Minorities (1981)
2. Resolution on measures in favor of minority languages and cultures (1983)
3. Resolution on languages and cultures of regional and ethnic minorities in the European Community (1987)
4. Resolution on linguistic and cultural minorities in the European Community (1994)
5. Directive of the European Parliament and Council on the protection of individual concerning the processing of personal data and the free movement of such data (1995)
6. Resolution on Racism, Xenophobia and Anti-Semitism and Further Steps for Elimination of Racial Discrimination (1998)
7. Resolution on Regional and Lesser Used European Languages (2001)



## Acts of the Commission

### 1. Communications of the Commission: Countering Racism, Xenophobia and Anti-Semitism in the Candidate Countries (1999)

Compared to the Council of Europe and OSCE, the EU was until the Maastricht Treaty less specific in terms of minority and generally human rights. Following its entering into force, the EU in Article 6 of the Treaty sets forth that **the principles of liberty, democracy, respect for human rights and fundamental freedoms, and rule of law are common to the Member States.**

Also, Article 49 of the consolidated text of the Treaty defines relation of the Union with the future Member States by linking their future membership to Article 6, Paragraph 1 of the Treaty, rendering its fulfillment a **condition** for launching the membership procedure. In order to avoid potential uncertainties in terms of membership requirements, it is necessary to refer to the agreement reached by Member States at the meeting of the Council of Europe (political body made of the highest representatives of Member States) in Copenhagen in 1993 which affirmed **the position towards EU membership**<sup>17</sup> of associated Member States from Central and Eastern Europe expressing their wish to do so. Under this standard, these countries will become full members only after they meet the following criteria (the Copenhagen Criteria):

- **Political:** stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- **Economic:** the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
- **Administrative:** the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union

Another EU document, though not completely consistently and precisely, calls for respect for certain standards directly or indirectly concerned with minority rights. Preamble of the Charter of Fundamental Rights of the EU from 2000 states that the document, with due regard for the principle of subsidiarity, reaffirms these rights as they result from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union and the Community Treaties. This document further calls for the respect for the European Convention for the Protection of Human Rights and Fundamental Freedoms, the

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<sup>17</sup> Regarding accession to the European Union, the Parliament of Montenegro passed **the Declaration on Accession to the EU** on June 8<sup>th</sup> 2005 which affirms its commitment to contribute to accelerated harmonization of the existing legal system of Montenegro with regulations and standards of the European Union based on the principles of rule of law and promotion of human and civil liberties and exercise and improvement of minority rights. Furthermore, on December 27<sup>th</sup> 2007 the Parliament of Montenegro adopted the **Resolution on Meeting the Requirements Arising from the Stabilization and Association Agreement with the EU** which represents another strong political support to the European integration of the country as it is its strategic priority.

Social Charters adopted by the Community and by the Council of Europe, as well as the practice of the following two courts: European Court of Justice (Union body) and European Court of Human Rights (the Council of Europe body).

Enjoyment of fundamental freedoms in the EU is its right and obligation to the other people, human community in general and future generations. The three important provisions that may be included in the minority rights regime are important:

- Article 20 of the Charter prescribing everyone is equal before the law
- Article 21 prohibiting any discrimination, including that based on belonging to an ethnic minority. Under the same provision, within the scope of application of the Treaty and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.
- Article 22 prescribing that Union shall respect cultural, religious and linguistic diversity.

***The Strategy for Minority Policy is a mechanism for implementation of all the aforementioned international standards in this respective area.***

## II Institutional Framework of the Minority Rights Policy in Montenegro

### 1. Humans Rights and Minority Protection in the Constitution

The Constitution of Montenegro provides legal grounds for the promotion, strengthening and improvement of the protection of fundamental human rights and freedoms and affirms obligation of Montenegro to meet international standards in that framework.

**Basic provisions of the Constitution** contain three provisions which are essential for the enjoyment of human rights and freedoms. Article 6 generally guarantees protection of human rights and freedoms as inviolable categories. Article 7 prohibits incitement of hatred or intolerance on any grounds, while Article 8 prohibits discrimination which is a general prerequisite for enjoyment of all rights and fundamental freedoms. To be more precise, Article 8 guarantees prohibition of *direct or indirect discrimination on any grounds* and states also that *regulations and introduction of special measures aimed at creating conditions for the exercise of national, gender and general equality and protecting the persons who are placed in unequal position on any grounds shall not be deemed discrimination. Special measures may be applied only until achievement of the goals because of which they have been undertaken* which leaves sufficient room for establishment of additional mechanisms of the protection and promotion of minority rights and integration of minorities with preserving of their specificity.

**Part two of the Constitution, counting 65 Articles, is dedicated to human rights and freedoms, civil and political, economic, social and cultural rights, as well as minority protection.**

In addition to the national legislation guaranteeing respect for fundamental human rights and freedoms, including minority rights, Montenegro established in Article 9 of the Constitution that ratified and published international treaties and generally recognized rules of international law form an integral part of internal legal order, having primacy over national legislation and being directly implemented when they govern matters differently from internal legislation.

As regards the **UN instruments**, they are the following: the Covenant on Civil and Political Rights, including both optional protocols, Covenant on Social, Economic and Cultural Rights, Convention relating to the Status of Refugees, including the Protocol, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on Rights of the Child, Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment. Montenegro is also bound by the Universal Declaration of Human Rights, that not being contractual but international common legal obligation.

**Council of Europe** instruments are the following: the European Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment, Framework Convention for the Protection of National Minorities, Charter for Regional and Minority Languages, European Social Charter.

## **2. Special – Minority Rights**

In addition to the fundamental human rights and freedoms, the Constitution and legislation of Montenegro grant a set of **additional rights** to minorities aiming to protect their overall national identity.

Part two of the Constitution, Articles 79 and 80 state that persons belonging to minority nations and other minority national communities shall be **guaranteed rights and freedoms which they may exercise either individually or in community with others, and prohibits assimilation of persons belonging to minority nations and other minority communities**. The state shall protect persons belonging to minority nations and other minority national communities against all forms of violent assimilation.

**The Constitution guarantees the following special-minority rights to the:**

- Expression, preservation, cherishing and public demonstration of national, ethnic, cultural and religious specificity
- Selection, use and public display of national symbols and celebrations of national holidays
- Use of their language and alphabet in private, public and official use
- Education in their language and alphabet in public institutions and the curricula should also include history and culture of persons belonging to minority nations and other minority national communities
- In areas with significant numbers of minority population, local government, public and judicial authorities shall conduct the proceedings in the language of national minorities and other minority national communities as well
- To establish educational, cultural and religious associations with financial assistance provided by the state
- To enlist and use their personal first and last name in their language and alphabet to all public documents
- In areas with significant numbers of minority population, local names, names of streets and settlements and toponyms shall also be written in the language of minority nations and other minority national communities
- Authentic representation in the Parliament of Montenegro and local Parliaments where they make a significant part of the population based on affirmative action principle
- Proportionate representation in public services, public authorities and local government
- Information in their language

- Establish and maintain contacts with the citizens and associations outside Montenegro with whom they share common national and ethnic origin, cultural and historical heritage and religious convictions
- Establish the Council for the Protection and Promotion of Special Rights

### **3. Legal Framework**

**The Law on Minority Rights and Freedoms** (Official Gazette of the Republic of Montenegro, no. 31/06, 51/06 and 38/07) more closely governs a body of minority rights and their protection mechanisms. The Law governs preservation of national minorities, that is protection of minorities against assimilation and effective participation of minorities in public life. The Law is harmonized with:

- Universal Declaration on Human Rights
- Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities
- European Convention for the Protection of Human Rights and Freedoms
- Framework Convention for the Protection of National Minorities
- European Charter for Regional and Minority Languages
- Recommendations of the OSCE High Commissioner for National Minorities from the Hague, Oslo and Lund
- Guidelines to Assist National Minority Participation in Electoral Process

Article 33 of the Law on Minority Rights and Freedoms prescribes that minorities and persons belonging to them may establish a Council with the aim of promoting rights and freedoms of minorities. The minority may establish only one Council with 17-35 members for a period of four years. The Council includes: Members of Parliament from the minority list, members of the Government proposed by representatives of that minority list, mayors of municipalities where minority forms majority, and other members of the Parliament and the Government, mayors of municipalities where minorities concerned live, if they wish, Presidents of minority parliamentary parties and heads of caucuses of minority parties. Other members of the Council are elected by secret ballot, at the electoral assembly of the minority concerned. Members of the Council elect the President and Secretary of the Council from their members by secret ballot. The Council adopts budget, Statute and Rules of Procedure governing matters of importance for the Council's work. Funds for the Council are allocated in the budget of Montenegro. Provision of Article 34 prescribes that the Council acquires the capacity of a legal person after its having registered with the registry of the Ministry.

Provisions of Article 35 of the Law define the following powers of the Council: to represent and act on behalf of the minority, submit motions to public authorities, local government, and public services for the promotion and development of minority rights and rights of their members, submit initiative to the President of Montenegro to prevent proclamation of the law violating rights of minorities and their members, participate in planning and establishment of educational institutions, give opinion on curriculum

programs expressing the specificity of minority, propose admittance of a certain number of students to the University of Montenegro, launch initiative for amendments to the regulations and other acts governing minority rights and perform other affairs in accordance with this Law.

If **the content of the Law on Minority Rights and Freedoms** is compared to the provisions of the existing Constitution, it may be concluded that it creates a **quite sound legal framework for further implementation of minority rights and freedoms**. However, in terms of a systematic regulation there is a need to establish mechanisms which ensure its full **sectoral implementation** (legal and practical one-implementation of the law) in those areas creating social and public framework for the exercise of minority rights.

In order to implement the Law on Minority Rights and Freedoms, **the Ministry for the Protection of Human and Minority Rights** passed **the Rules for the First Election of the Minority Council and Instructions on Uniform Templates for Conducting Elections of the Council Members** (Official Gazette, no. 46/07). These Rules and Instructions precisely define the composition and number of members in the Minority Council, methodology of the Council election, methodology of convening and work of electoral assembly, methodology of electing Council members and also provide clear guidelines to this process. The Ministry still carries out activities related to the establishment of the Council.<sup>18</sup>

#### **4. Competent Institutions and Bodies**

Several important institutions and bodies in Montenegro are engaged in the protection of rights and promotion of the position of minorities. That is primarily **the Ministry for the Protection of Human and Minority Rights** which aims at monitoring, examining and protecting minority rights in line with the Constitution, laws and international documents governing this area based on democratic trends Montenegro aspires to achieve.

Permanent working body – **the Human Rights and Freedoms Committee** – has been established at the Parliament of Montenegro to consider matters, particularly normative proposals, from the area of human and minority rights.

Based on legal arrangements, electoral parliamentary assemblies of the following Councils have taken place so far: the National Council of Croats (January 31<sup>st</sup> 2008), Bosniac Council (March 15<sup>th</sup> 2008), Roma Council (March 23<sup>rd</sup> 2008), Muslim Council (March 29<sup>th</sup> 2008) and Albanian Council (April 19<sup>th</sup> 2008).

The Parliament made the Resolution on Establishment of **the Minority Fund** (Official Gazette of the Republic of Montenegro, no. 13/08) for the purpose of providing support to the activities important for the preservation and development of national, ethnic specificities of minority nations and other minority national communities and their

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<sup>18</sup> National Program for Integration of Montenegro into the EU for a period 2008-2012

members as regards their respective national ethnic, cultural, linguistic and religious identities.

In addition to that, **the Protector of Human Rights and Freedoms** exists as an independent and unbiased institution.

### III Basic Information about the Position of Minorities in Montenegro

#### 1. Statistical Data

The population census, which also included national structure, was conducted in Montenegro in a period from 1946 until 2003 for seven times (1948, 1953, 1961, 1971, 1981, 1991 and 2003). The methodology of the population census differed from one census to another, as it was gradually becoming improved which resulted in most systematic approach and more precise data processing in later censuses.

**T1 – POPULATION ACCORDING TO ITS NATIONAL OR ETHNIC BELONGING  
IN CENSUSES FROM 1948, 1953, 1961, AND 1971**

	1948		1953		1961		1971	
	Number	%	Number	%	Number	%	Number	%
Montenegrins	342.009	90,67	363.686	86,62	383.988	81,37	355.632	67,15
Serbs	6.707	1,78	13.864	3,30	14.087	2,99	39.512	7,46
Yugoslavs			6424	1,53	15.59	0,33	10.943	2,07
Albanians <sup>19</sup>	19.425	5,15	23.460	5,59	25.803	5,47	35.671	6,74
Muslims					30.665	6,50	70.236	13,26
Croats	6.808	1,80	9.814	2,34	10.664	2,26	9.192	1,74
Other	2.240		2.625		5.128		8.418	
<b>Total</b>	<b>377.189</b>	<b>100</b>	<b>419.873</b>	<b>100,0</b>	<b>471.894</b>	<b>100,0</b>	<b>529.604</b>	<b>100,0</b>

Source: Monstat, 2008;

However, in using census results it is necessary to take into consideration that in the 2003 census and earlier ones there was not a complete comparability between the definitions of permanent, i.e. total population. In the 1981 and 1991 censuses the permanent population included, in addition to the population in the country, Montenegrin nationals who were temporarily working abroad and their family members residing with them abroad.

Following international recommendations, the 2003 Census, in addition to the population in the country, included Montenegrin nationals whose work or residence abroad did not exceed one year and foreign nationals working or residing in Montenegro in the capacity of family members for longer than one year in the permanent population.

<sup>19</sup> In 1948 and 1953 censuses, the word *Šiptar* was used for Albanians

According to the 2003 census, the number of citizens in Montenegro equaled 620.145. The national structure of the population was the following: 267.669 or 43.16% of Montenegrins, 24.625 or 3.97% of Muslims, 198.414 or 31.99% of Serbs, 31.163 or 5.03% of Albanians, 6.811 or 1.10% of Croats, 48.184 or 7.77% of Bosniaks, 2.601 or 0.42% of Roma.

Additionally, it should be underlined that in the latest census particular attention was attached to the engagement of the members of minorities to conduct the census in areas where minorities form majority or significant share of the population.

Data about national composition of the population in the 2003 census were gathered based on free expression of inhabitants. Article 34 of the Constitution which was in force at that time, guaranteed full freedom to the citizens to express their national belonging. Under the same Article, a citizen was granted the right not to reply to that question.

**T 2 – POPULATION ACCORDING TO ITS NATIONAL OR ETHNIC BELONGING  
IN 1948, 1953, 1961 AND 1971 CENSUSES**

	1981		1991		2003*	
	Broj	%	Broj	%	Broj	%
Montenegrins	400.488	68,54	380.467	61,86	267.669	43,16
Serbs	19.407	3,32	57.453	9,34	198.414	31,99
Yugoslavs	31.243	5,35	26.159	4,25	1.860	0,30
Albanians	37.735	6,46	40.415	6,57	31.163	5,03
Muslims	78.080	13,36	89.614	14,57	24.625	3,97
Bosniaks		0,00		0,00	48.184	7,77
Croats	6.904	1,18	6.244	1,02	6.811	1,10
Roma	1.471	0,25	3.282	0,53	2.601	0,42
Others	2.741	0,47	2.383	0,39	4.486	0,72
Non-committed/neutral	301	0,05	1.944	0,32	26.906	4,34
Regional affiliation	1.602	0,27	998	0,16	1.258	0,20
Unknown	4.338	0,74	6.076	0,99	6.168	0,99
<b>UKUPNO</b>	<b>584.310</b>	<b>100,00</b>	<b>615.035</b>	<b>100,00</b>	<b>620.145</b>	<b>100,00</b>

Source: Monstat, 2008;

**2. Ethnic Composition of the Population of Montenegro by Municipalities (The 2003 Census)**

T 3	TOTAL	Montenegrins %	Serbs %	Albanians %	Bosniacs %	Muslims %	Croats %	Roma and Egyptians	Others %
Andrijevica	5.785	25,13	69,61	0,00	0,00	0,14	0,03	0,00	5,08
Bar	40.037	47,25	27,68	7,61	2,30	6,43	0,65	0,16	7,92
Berane	35.068	25,52	46,51	0,10	16,15	6,56	0,13	0,34	4,69
Bijelo Polje	50.284	17,77	40,32	0,06	22,63	15,78	0,09	0,26	3,08
Budva	15.909	45,33	40,87	0,35	0,15	1,28	1,12	0,37	10,53



Danilovgrad	16.523	67,84	25,51	0,04	0,01	0,35	0,28	0,03	5,94
Žabljak	4.204	43,03	50,26	0,00	0,00	0,02	0,05	0,00	6,64
Kolašin	9.949	50,65	44,77	0,01	0,01	0,32	0,11	0,00	4,13
Kotor	22.947	46,81	30,91	0,33	0,07	0,46	7,68	0,30	13,44
Mojkovac	10.066	54,77	41,12	0,02	0,09	0,14	0,04	0,00	3,82
Nikšić	75.282	62,64	26,74	0,04	0,20	0,92	0,18	0,59	8,71
Plav	13.805	5,54	18,93	19,70	49,32	5,71	0,03	0,00	0,78
Plužine	4.272	32,61	60,51	0,00	0,00	0,02	0,02	0,00	6,84
Pljevlja	35.806	21,52	60,11	0,02	5,21	8,14	0,04	0,00	4,97
Podgorica	169.132	56,96	26,27	5,50	1,36	2,60	0,42	0,83	6,06
Rožaje	22.693	1,94	3,98	4,44	82,09	6,65	0,02	0,07	0,81
Tivat	13.630	29,95	35,19	1,06	0,27	1,14	19,54	0,40	12,45
Ulcinj	20.290	11,93	7,44	72,14	1,46	3,36	0,38	0,57	2,72
Herceg Novi	33.034	28,60	52,88	0,08	0,24	0,67	2,42	0,64	14,48
Cetinje	18.482	90,67	4,62	0,23	0,03	0,12	0,27	0,70	3,37
Šavnik	2.947	46,83	47,44	0,00	0,00	0,17	0,10	0,00	5,46
<b>CRNA GORA</b>	620.145	43,16	31,99	5,03	7,77	3,97	1,10	0,46	6,52

### 3. Factual Situation in the Area of Legislative Reform and Implementation of Regulations

The current legislative reforms in Montenegro have covered almost all areas of regulations, whereby the lawmaker was restricted by the implementation of international legal standards. One of the models for systematic regulation of some areas is certainly the **Law on Minority Rights and Freedoms** that lays down a set of obligations for the public and other authorities in implementation of minority rights and freedoms. As this is a systematic, and also *sui generis* regulation, it is natural that other legal acts look up to (but not harmonize as the acts have the same legal force) the provisions of this law which also must be harmonized with the Constitution and international standards.

In addition to the laws protecting minority rights in other areas (education, media and information, culture, local governance etc.), Montenegro also accepted important international documents from this area, first of all European mandatory legal regulations of the Council of Europe- Framework Convention for the Protection of National Minorities and European Charter for Regional and Minority Languages. In compliance with obligations arising from the CoE, the first reports of the state on implementation of these documents have been submitted to the relevant entities by the competent Ministry.

Generally, the conclusion is that a number of currently applicable legal regulations in Montenegro (partially or entirely) incorporated the concept of respect and protection of minority rights in provisions of the law. Their main weakness is the fact that the system of law implementation has not provided efficient, effective and timely legal remedy for their implementation or at least defined the methodology and procedure for the exercise of some rights.

Having in mind the aforementioned general assessment, and based on defined constitutional framework, **the Strategy focuses on several critical matters:**

1. Authentic political representation (electoral legislation)
2. Representation in public and local government bodies (regulations on public and local government, including legislation governing civil servants and local government employees)
3. Procedural rights (the use of language and alphabet in procedure before judicial and other bodies in areas with significant numbers of minorities in population)
4. Special symbols of identity (the use of national symbols and celebration of national holidays)
5. Issuance of official documents (in mother tongue and alphabet)
6. Cultural attributes (encouraging rights with financial assistance by the state)
7. Education (as a broader and internationally recognized standard) and education in minority language (institutional approach and content of the curricula)
8. Information (in the framework of public broadcasters and printed media)
9. Establishing contacts outside Montenegro (with citizens and associations with whom minorities share common national and ethnic origin, cultural and historical heritage and religious convictions).
10. Institutional arrangement of bodies aimed at direct or indirect protection of minority rights

### **3.1. Authentic Political Representation (Electoral Legislation)**

The existing legal framework eliminated shortcomings related to **the constitutional grounds for resolving the issue of authentic representation and affirmative action in political representation of minorities**. Since provisions of the existing Law on Minority Rights and Freedoms governing electoral model have been suspended as unconstitutional with regard to the previous Constitution, the lawmaker remains tasked with responsibility to find appropriate forms and contents for the future elaboration of constitutional guarantees. By all means, such intervention should serve to empower minorities and their role in political life of the state and its functioning, in addition to its being necessary for safeguarding of the level of the standard achieved. Even though the Constitution has not provided answers to specific questions about normative identification of minorities, the existing statistical data based on the results from the latest census lay sound foundations that will design and resolve this matter.

As regards political participation, it may be concluded that this matter is only partially harmonized with international legal standards applicable to minority protection. The existing arrangements based on affirmative action principles are essentially concerned with only one minority, while for the other this has not been resolved. Consistent and complete arrangement of this matter falls within the scope of this Strategy.

### **3.2. Representation in Public and Local Government Bodies (regulations on central and local Government, including legislation on civil servants and employees of the local Government)**

**Participation or representation of persons belonging to minorities in public authorities proportionate to their share in the total population** has been based on the existing legislation. However, this arrangement needs to be upgraded by establishment of the records system and its harmonization with the standards applicable to the protection of personal data which would enable these records to serve the purpose they have been established for in the first place. First of all, education and training system must be used for building of human resources capacity for the fulfillment of this standards, with equal relation to ethnic belonging, competence and reference which are the goals of the overall administration reform. This particularly refers to those areas where the education and vocational training of civil servants and public officials have been incorporated in the legal framework (judiciary, administration and the like). In fact, proportionate representation of minorities in public administration and local government has not been achieved yet even though it is prescribed by a fundamental constitutional category. Reliable statistical data that would reveal the factual condition also do not exist. **The minority aspect has not been elaborated in the existing human resources records.**

### **3.3.Procedural Rights (the use of language and alphabet before judicial and other bodies in areas with significant numbers of minorities in total population)**

**Constitutional arrangement prescribes the use of official language.** Article 13 of the Constitution states that official language in Montenegro is Montenegrin, while Serbian, Bosnian, Albanian and Croatian are in official use. In addition, the table of ethnic structure of Montenegro from the 2003 census reveals that languages of all national categories that make more than 1% of the total population of Montenegro are defined in the Constitution as official languages in official use. This concept is somewhat broader than that provided in procedural and material legislation. Apart from the need to arrange laws to be compliant with the new constitutional arrangements, the matter of concern is whether some norms are functional in the areas they govern and with regard to the purpose to be achieved. Some legal arrangements, or even the majority of them, link the right to the use of minority language and alphabet with the territory inhabited by the minority in significant numbers.

**In the procedural legislation,** the concept of minority language used as the official language has been linked to the official language used in court or other authority, where the organizational structure has not defined the territorial jurisdiction of authorities before which a proceedings is being brought in line with a relevant legal norm. Therefore, it is very important to determine the nature of such norm, giving it more precise content by a separate law on the official language use, or by innovating the existing regulations on the organization of governmental authorities, which would also define this issue. Anyhow, it is necessary to harmonize the existing procedural legislation by bringing the norm's

content to the same level in all laws, especially since the same standard has been used in both court and administrative procedures.

As a further guarantee of **minority rights protection in proceedings before national courts**, it is possible to choose the solution, e.g. a valid norm in administrative legislation and litigation proceedings where, apart from the option of using one's own language, the court or judge has been stipulated as obliged to emphasize it to the party in the proceedings.

With regard to the **use of minority languages in the education system**, it can be noted that, in principle, the relevant international legal standards have been met. Namely, when we talk of the Albanian language, it should be pointed out that it has been used at all education levels, from preschool to university. The same can be stated for the field of information in Albanian. On the other hand, when we talk of the **language use before governmental authorities** there should be pointed out that there are many normative wants of precision and dilemmas which need to be solved through measures of this strategy. In addition, for this segment there are no reliable empirical data. Speaking of the **language of other minorities**, the problem is much easier since it is a related or common language, where there are no such linguistic barriers to understanding. The issue should be arranged normatively in detail, and it has been the subject of the suggested strategy measures. In addition, it is to note that the norms which guarantee the **use of language and alphabet at issuance of identity documents** have started to apply consistently. The members of minorities have also been guaranteed to enlist their personal data into their official identification documents in their mother tongue alphabet.

### **3.4. Special identity marks (the use of national symbols and celebration of national holidays)**

Protection of the identity of minority communities may be observed at two levels: a) protection of individual rights of minority members and their identity marks, and b) protection of national symbols, toponyms, signs, etc., as collective marks.

When it concerns **national symbols, toponym determinants, signs, etc.**, the same standard has been applied, where legal norm must be established regarding the relationship between a minority language or ethnic community language and their alphabet and the official language and alphabet used in Montenegro (the manner of presentation, the order of inscriptions, etc.).

### **3.5. Issuance of official identification documents (registration in own language and alphabet)**

A number of regulations have taken into consideration the **right of minority members to use their own language and alphabet at registration with official registers**, where the problems have been recorded in the application of these laws (e.g. Law on Personal Name). The other regulations do not explicitly mention this standard, e.g. Law on Registry Books, although it can be indirectly concluded that the right has been exercised

based on the provisions of other laws. For legal safety, it is necessary to establish a language and alphabet standard in all laws concerning the registration with the official records, and issuance of official identification documents, Article 5, Paragraph 2 of the Bill on Personal Name envisages that: *Personal name of a member of minority nation or other national minority community (hereinafter: the Minorities) shall be entered into the registry book in their language and alphabet, unless the minority member decides differently.* Article 3, Paragraphs 2 and 3 of the Bill on Registry Books envisage that: *The data in Registry records referring to members of minority nations and other national minority communities shall be entered also in the language and alphabet of those minorities, in accordance with law. Certificates from the Registry records for minorities' members shall be issued also in the language and alphabet of their minority, in accordance with law.*

The provision of Article 7 of the Law on Identification Card (Official Gazette of Montenegro, no. 12/07) envisages that the identification card form shall be printed in Montenegrin and English, and filled in Montenegrin language, while for citizens who speak Serbian, Bosnian, Albanian, or Croatian in the official use the content of the identification card form and relevant data shall be in parallel entered in those languages, upon the request of the applicant, except for the name and surname, which are entered in the language and alphabet of the applicant. Additionally, Article 15 of the Law on Travel Documents (Official Gazette of Montenegro, no. 21/08 and 25/08) stipulates that a travel document form shall be printed in Montenegrin language, the Latin alphabet, and in English and French, while shall be filled in Montenegrin language, the Latin alphabet; and stipulates that for a member of ethnic minority or other national minority community the surname and name in the travel document form shall be in parallel entered in the language and alphabet of the minority the applicant affiliates to, upon his/her request, in accordance with the Constitution, special law or international treaty and standards. At applicant's request, the surname and name may be entered also in Cyrillic alphabet.

### **3.6. Cultural Attributes (promotion of rights with financial assistance from the state)**

**General obligation of the state in preserving and taking care of cultural heritage** has further been raised to a higher level by the fact that it is multiethnic and multi-confessional in structure. Therefore, it is necessary to establish a clear legal norm referring to the cultural heritage of different ethnic groups and the obligation of the state to take care of it equally as of the cultural heritage of the majority, while stressing the fact that it makes the part of the overall cultural treasure of the state of Montenegro. In such a way, in addition to pointing out to the positive obligation of the state, a wider social awareness shall be raised on the need for preserving the overall cultural heritage and monument fund of Montenegro, with all its cultural, ethnic and ethnologic varieties as general value.

Generally, with regard to the protection of cultural identity of the minority corpus, it can also be noted that international standards have essentially been met, the problems occurring much less to that regard, since the cultural heritage of the minorities makes a

part of the unique cultural heritage of Montenegro. It is also evident that there is not enough quality-programs in the public service broadcasts which would present the culture and cultural heritage of minorities.

### **3.7. Education (as a wider and internationally recognized standard) and schooling in the minority language (institutional approach and the content of education programs)**

**Systematic laws in the field of education** have respected the concept of general constitutional guarantee about education of minorities both at the level of general goals and principles of education and at the level of individual provisions. Essentially, the entire system has been directed towards the integration of minorities while preserving their identity. In practice, cases of complications as to a legal solution are possible where there is no minority staff to be introduced into the teaching process, or where the teachers engaged do not have a parallel knowledge of both the minority language and the official language in Montenegro, that being an important factor in the integration of minorities.

In that sense, the planning and programming of study programs are very important, the programs being partially in the function of satisfying minority standards and parallel studying of minority languages. The possible drawback occurs at the level of high education, i.e. the structure and number of institutions, enrollment policy and the content of trainer education program. **The enrollment policy** at the highest education level is under the authority of high-education institutions, and it must adopt certain legal solutions referring to minorities, in which the state provides the supervision and control functions, takes the obligation of funding in line with its capacities, and otherwise encourages the institutions to fulfill the standards on minority education in accordance with the Law. This approach has been exercised both in institutional sense (organizing and encouraging education institutions or their units in all forms of property) and in content, regarding the arrangement of relations within the education system as a whole. In any case, the entire process must be projected so that, apart from meeting the form, it keeps the necessary level of education quality aimed at reaching the goals in the area of minority rights. Although the Law on Adult Education has not envisaged separate standards, it is evident that the same general principles have been applied to this sphere of education, too, as to the other beneficiaries of educational process, including the education of minorities' members.

Special focus needs to be given to the publishing industry (an area of public interest established by law) and models of provision of school books and didactic materials which are in the function of timely and continuous supplying to teachers and pre-university and university students aimed at the implementation of teaching curriculums and programs. This is especially the case because their provisions have been anachronic and subject to compulsory innovations.

### 3.8. Informing of minorities (within national public broadcasting services and media outlet)

**Informing of minorities** (as well as the majority) is the activity of special interest which is being exercised through the establishment and operation of national public services. The Law on Broadcasting has stipulated the **obligation of public service broadcasters** to:

- produce and broadcast programs intended for all segments of society, without discrimination, especially taking into consideration specific social groups such as the children and youth, minority ethnic groups, disabled, persons in social and medical need, etc.;
- foster culture of public communication and linguistic standards;
- produce and broadcast programs which express cultural identity of peoples, national and ethnic groups;
- produce and broadcast programs in mother tongues of national and ethnic groups in the areas where they live;
- in times of election campaigns, based on special rules, provide equal presentation of political parties, coalitions and officially accepted candidates and party-lists;
- mutually cooperate and exchange programs which are of interest for the citizens of the Republic.

**Law on Public Broadcasting Services** has envisaged the possibility of establishing regional radio and television outlets. The concept which started to live in practice shows the regional trend, but does not satisfy the criteria of ethnic representation of certain regions, which is the purpose of the legal norm. At the same time, local public services failed to start operating in a way to provide quality and substantial informing of minority communities across Montenegro. Thus, the essence of this norm is not only in satisfying linguistic standards, but also in the sphere of cultural, ethnic and other identity characteristics of the minorities which are the subject to informing.

Special responsibility for the implementation of these standards belongs to different management and supervising bodies in relation to these laws, and parliamentary structure which partially nominates members of those bodies. It is especially the case for the **Council of RTCG** which, within its competences, establishes the Commission for programs in Albanian and other minority languages. Within this body the activities must be taken to identify efficient models through which the public interest of informing minority communities in Montenegro would be pursued in sufficient scope and quality. These measures are aimed at timely, objective and quality informing of minorities on all the aspects of political, cultural, public and social life in general in Montenegro, especially on the issues which are of vital importance for the status of minorities and their members. That way, a simple legal norm will be brought to life as a ground for active participate in the decision-making process at all levels.

### **3.9. Establishing contacts outside Montenegro (with citizens and associations with whom minorities have common national and ethnic background, cultural-historical heritage, and religious beliefs)**

In line with the constitutional guarantee on establishing and maintaining of contacts between minorities and citizens and associations outside Montenegro, the state is obliged to enable and encourage such processes as a kind of cooperation, which may not be directed against fundamental state interests and international legal status of Montenegro. It is natural for thus established processes of cooperation and making ties to contribute to regional stability and cooperation, as much as to the international reputation of Montenegro.

### **3.10. Institutional organization of bodies aimed at direct or indirect protection of minority rights**

The Law on Minority Rights and Freedoms stipulates the possibility of establishing a **National Council** aimed at promoting the rights and freedoms of minority members and their collectivities. Having in mind the significance of these bodies and their competences, it is clear that they can largely influence the position of minority communities which form them. The role of the state should be in the function of strengthening these bodies as authentic representatives of their ethnicities, where the only prerogative of the authorities shall be the control of the legality of the very process, i.e. the implementation of the norms in accordance with the Law.

Finally, as a special form of preserving mutual trust and tolerance, this Strategy indicates a number of **penalty and offence provisions** which envisage very rigorous penalties for inciting racial and religious animosities or giving offence to members of national minorities and ethnic groups, and other forms of liability for actions intended to violate good inter-ethnic relations in Montenegro. Although the media themselves have registered a significant number of such actions, the prosecution authorities and courts have processed such occurrences in very small number of cases, which must be overcome by a decisive and joint action of all governmental institutions in the next period.

## **IV Strategy for Minority Policy as a Basis for Implementation of the Policy of the Government of Montenegro in the Area of Respect and Protection of Minority Rights**

### **1. Goals and Objectives of the Strategy for Minority Policy**

**The Strategy for Minority Policy**, in compliance with Article 7 of the Law on Minority Rights and Freedoms, represents **a planning document** in which the Government defines measures for implementation of this Law and improvement of living conditions of minorities, promotion of measures and activities, and the greatest possible integration of Roma people although Article 7 of the Law envisages bringing a unique minority strategy; having in mind the importance and particularity of issues related to the Roma



status, the Government of Montenegro has decided to adopt a separate strategy for the improvement of the status of Roma, Ashkalia and Egyptians, which was done in 2007.

To that regard, the Strategy represents a sum of specific measures and activities in the following **ten-year-period of legal, political, economic, social, cultural-informative, educational, and every other nature**, as well as the definition of **holders, time-schedules and financial costs**, primarily of the line ministries of the Government of Montenegro, aimed at overall improvement of the position of minorities and their better integration into social developments.

The Strategy should incorporate all the international legal standards which envisage the institutes of recognition of the additional set of rights to minorities and their members, which are called the *affirmative action, preferential treatment, positive discrimination*, etc. The concept, as an international legal standard, relates to national, ethnic, racial, religious, linguistic, cultural minorities. Those are so-called additional rights, recognized in order to protect the identity of minorities and to enable factual equality of minority population.

The Strategy creates **prerequisites for implementing the policy of the protection and promotion of minority rights in Montenegro**, which envisages concrete application of international legal and thereupon based constitutional and legal standards referring to human and minority rights. The Strategy also envisages coordinated, joint and synchronized efforts and activities of the Government of Montenegro, in financial and every other area, of the international community (primarily the active involvement of the Council of Europe, OSCE and EU), and the organized civil sector in Montenegro, (especially different non-governmental organizations dealing with the protection and promotion of human and minority rights).

Since Article 1 of the Constitution of Montenegro defines that Montenegro is an independent and sovereign state of the republican type of rule, and also, simultaneously, a *civil, democratic, ecological, and the state of social justice based on the rule of law*, - it was necessary when drafting this important document **to analyze positive comparative practices** of modern democratic states in this important policy.

At the same time, by signing the **Stabilization and Association Agreement with the European Union**, in October 2007, Montenegro has undertaken the responsibility, within political criteria of association, to draft the Strategy for Minority Policy in keeping with the best practices of the European states.

Having in mind the dynamics of the European integrations and the obligations undertaken by the Stabilization and Association Agreement, the basic legislative and institutional framework and the short-term and mid-term priorities regarding minority policy have been defined in the strategic document – **National Program for Integration of Montenegro into EU, 2008-2012 (Chapter I, Political Criteria, Section 1.2. Human Rights and Protection of Minorities)**.

**The goal of this Strategy is a contribution to the promotion in the exercise of minority rights, and education of the public on the values and meaning of respect and protection of minorities, multiethnic tolerance, and organizational models for co-living in multiethnic communities, as necessary conditions for overall democratization and full development of the Montenegrin society on its path towards the European integrations.**

The Strategy, as a set of institutionalized, comprehensive, systematized and continuous policy measures of the Government of Montenegro referring to minority members and communities, has as its basic goal the application and exercise of all human and minority rights envisaged by the international law instruments and constitutional legal system of Montenegro. More precisely, the measures envisaged by the Strategy should enable the creation of all necessary legal, political, socio-economic and cultural prerequisites for concrete and realistic achievement of the abovementioned international law and constitutional law standards, so that the position of the minorities' members and communities in Montenegro could be substantially and qualitatively improved, and they completely integrated into the Montenegrin society. Therefore, primary, permanent and continuous goal of the Strategy is the **integration without assimilation** of all minority members and minority communities as collectivities into the Montenegrin state and society.

This concept –**integration without assimilation** – is the essential component of a peaceful, democratic, pluralistic society based on the rule of law and respect of human and minority rights. In such social context, sustainability, affirmation and promotion of diversities are conditions of dynamic and long-term stability and cohesion of society. Therefore, although the primary goal of the Strategy, **integration without assimilation**, is not an autonomous goal on its own, but a means to achieve further democratic quality, level of integration, cohesion and stability of the Montenegrin society and state. That is also very important prerequisite for participation and involvement in the Euro-Atlantic integration processes. It should not be specially noted that full exercise of human and minority rights, i.e. creation of proper legal, political, socio-economic and cultural environment in that context, is a very specific and short-term obligation from the Stabilization and Association Agreement with the European Union.

The achievement of this primary goal of the Strategy is a **long-lasting and continuous political process** which includes successive achievements of a series of important and numerous objectives which are substantial and constituent elements of this main goal, and which all together should result in its final realization.

To that end, the **measures** envisaged by the Strategy should primarily provide legal and factual prohibition of any discrimination and inequality, i.e. enable full legal and factual **equal rights** for all the members of society and different social groups, especially for minorities and minority nations. Furthermore, the equal right treatment for members of minority nations and communities also means the essential adoption and application of a

set of measures of **positive or affirmative action**, in relation to the minority nations and communities' members, since it is the only way to achieve real and full equality-equal right status for all citizens of Montenegro. More precisely, the measures of **affirmative action** should provide **equal opportunities** in society for members of minority nations, since without their proper, active and full participation in social and political life of Montenegro the main goal of the Strategy – **integration without assimilation** - cannot be achieved. The prohibition of discrimination and measures of affirmative action are an important prerequisite for the achievement of another significant goal of the Strategy, which would be the full and sincere conception and acceptance of **Montenegro** by all members of minority nations and communities **as their own state**.

The constituent part of this goal is eliminating the gap **between the envisaged – normatively proclaimed concept of the protection of minorities and the factual, really achieved degree of protection of the rights of minority nations and their communities**, or at least the reduction of the non-negligible existing gap to the smallest possible degree. This also includes the adoption of some new (e.g. against discrimination) and harmonization of a large number of the existing laws with the abovementioned international law standards on the protection of human and minority rights.

The measures envisaged by this Strategy are also aimed at enabling full and real **protection, affirmation and promotion of language, culture and identity** of all the members of minority nations and their communities as collectivities, to the largest possible degree, in line with the abovementioned international law standards on the protection of human and minority rights. Not only that the integration of the members of minority nations and communities into the Montenegrin state and society must not happen to the detriment of their culture and identity, but it is factually impossible in any other way but through positive measures which promote and affirm the identity and cultural creativity of minority nations. In a broader social and cultural context, the **identities and cultures of minority nations make an integral part of the identity and culture of Montenegro as a pluralistic, democratic, tolerant, multi-cultural and multi-confessional society and community**. Therefore, the measures envisaged by the Strategy, especially in this goal, are in the greatest, long-term interest of the Montenegrin state and society, and not only in the interest of the members of minority nations and their communities.

Furthermore, one of the most important goals of this Strategy is to provide **effective and efficient participations of the members of minority nations in governing the state and society**, since it is a significant prerequisite of protection of other minority rights and the acceptance of Montenegro as their own state. Special or additional rights of political participation are an important segment of the protection of identity and culture, but also the necessary prerequisite for active involvement of minority nations in social and political life. That way, the conditions are made for their **political subjectivity**, i.e. a long-lasting and permanent social emancipation. **Special political rights** should provide the members of minority nations with a proper participation in the execution of power and making of decisions, especially those directly concerning the minorities, but also all the others of interest for the development and prosperity of Montenegro as a whole. By

appropriate representation in all the branches of power, in local government, and by participation in making political decisions, the members of minority nations and communities will take their share of responsibility for both their own development and progress and the development and progress of Montenegro as a whole. Finally, the effective political participation of the members of minority nations and communities will undoubtedly strengthen further the internal and international legitimacy of Montenegro as an independent and democratic state.

One of important goals of the Strategy is **the improvement of friendly and neighborly relations with the states from the immediate surrounding, i.e. the mother states** of minorities from Montenegro. In that context, the Strategy is undoubtedly in the function of implementation of the foreign policy of Montenegro and its basic priority, i.e. establishing the best friendly and neighboring relations with the states bordering with Montenegro. The realization and implementation of measures envisaged by the Strategy will enable the establishment of qualitatively more substantial relations with neighboring countries, based on full thrust and understanding. Integrated and protected minorities are the essential bridge to connecting and making friendship with the neighboring states, the factor of political, cultural, economic and every other cooperation, a kind of guarantee that the other possibly disputable issues would be resolved in a spirit of mutual thrust and understanding. In that context, the Strategy achieves broader foreign policy goals, primarily those considering the meeting of conditions from the Stabilization and Association Agreement with EU, for possible admission to NATO, as well as membership obligations from the Council of Europe and OSCE.

More complete integration of the members of minority nations and communities, while preserving and promoting their identity and culture, includes in a sense the **creation of more substantial and deeper political and socio-cultural ties aimed at establishing full, permanent and sincere thrust across the Montenegrin society on the issues of minority protection**. This includes positions and opinions of individuals, social groups, in relation to the media, local governments, cultural, religious and governmental institutions, the highest governmental bodies. In that sense, the measures envisaged by this Strategy should initiate and improve the quality of establishing new relations based on full mutual thrust and general social and cultural consensus that the protection, affirmation and integration of minorities is in the greatest national interest of the Montenegrin state and society.

The basic short-term goal of the Strategy is further **institutionalization of the state policy of Montenegro referring to the members of minority nations and their communities** in the following ten-year-period. In line with the measures suggested, the Government as a whole and the appropriate ministries separately, as well as the bodies of local governance, with active participation and cooperation of political, cultural and non-governmental organizations, the members of minority nations and other competent persons involved in the civil society, will adopt concrete plans and programs of activities aimed at the application of the stipulated measures. The Government will take all the necessary human resources, functional, educational, financial and structural measures

with a view to providing full implementation of the Strategy, and the appropriate mechanisms of supervision of those activities.

In such context, the Government will form a separate group – **the Commission for Strategy Implementation Monitoring** at governmental level, (which will later also monitor the implementation of planning documents adopted in this field, as a kind of horizontal coordination and common reporting), as well as **interministerial working groups** at the level of the most important ministries for the most important fields of activity; appoint special commissioners in the appropriate ministries, public services and local governance bodies, who will be accountable directly to the Government and the Commission for Strategy Implementation. **The Commission shall make a plan and schedule of activities for the Strategy implementation for each year**, assess the results and propose modifications and annexes to the Strategy annually. The representatives of minority nations and communities and their non-governmental organizations will be adequately present in those governmental level bodies, working groups of the ministries, and local governance bodies.

In other words, **specific annual plans and schedules of implementation** of the proposed activities will be prepared and adopted by the Commission for Strategy Implementation in cooperation with the Ministry for Protection of Human and Minority Rights, other line ministries and competent representatives of civil sector in accordance with funds available.

In the way stated above, the following will be achieved:

- Institutionalization of the state policy and obligations to minorities, in line with the Strategy
- Developing appropriate plans and schedules for the Strategy implementation
- Defining the holders of activities aimed at the implementation of Strategy-determined tasks, at all levels of authority
- Establishing working bodies for the Strategy implementation
- Providing funds for the Strategy application, in line with dynamics of its implementation

To achieve the objectives above it is necessary to undertake a number of comprehensive, continuous, inter-related measures and activities which, as already stressed, imply **respect, protection and creating conditions** for exercising fundamental human and minority rights for all members of minority nations and their communities, individually and collectively.

## **2. Scopes of Activity, Priorities, Time Frames**

### **2. 1. Carrying out a Comprehensive Statistical-Analytical Study on Minorities**

Following the example of some neighboring countries (e.g. Croatia), it is necessary to carry out a detailed research on demographic, economic, legal, social, cultural, and other

aspects determining the status of minority population. The study should be coordinated between the line ministry and other institutions involved which will be decided by the Government of Montenegro;

**Time Frame:** Having in mind complexity of the matter, lack of data and relatively poor statistical basis in this field, and especially the sensitivity of certain issues going into subjective evaluation of the status, the deadline for carrying out the study has been set at one year from the date of Strategy's adoption.

## **2. 2. Prohibition of Discrimination**

- **Drafting of systematic anti-discrimination regulations**, in line with international standards and constitutional norms on prohibition of discrimination; this measure is among the top priority obligations of the Government and the Parliament of Montenegro;

- Harmonizing the existing laws and passing the new ones, aimed at **harmonization of national regulations with international standards** (this is a long-term goal where the priorities are being set in line with dynamics of accession to the integration process);

- In this framework, in line with the goals and priorities of the Montenegrin foreign policy, a possibility and need for signing **bilateral agreements with neighboring states** will be analyzed, aimed at more effective and efficient bilateral protection of minorities and their members.

**Time Frame:** Within this scope of activity, it is a priority to pass General Anti-Discrimination Law as a basis for defining relations in a number of sector policies, which is also especially important for the Strategy implementation. Based on this regulation, the harmonization of dynamics and revision of content of strategic measures of minority policy will be done. The deadline for reaching this goal is **one year**.

## **2. 3. Use of Language and Alphabet**

- **normative regulation of the use of language and alphabet, at local, regional and state level;** this includes harmonization of procedural and substantive legislation, in accordance with the abovementioned international legal standards; the use of language and alphabet by minorities in accordance with relevant constitutional guarantees; in that context, conditions will be provided for application of these laws, which imply organizational, functional and control mechanisms. The measures proposed also anticipate the provision of technical-administrative conditions;

- the **use of language in toponym and official signs** in areas where members of minorities live in larger numbers will be specified separately;

- the state is also obliged to provide **translation of fundamental legal and political documents as well as translation of international documents concerning human and minority rights** into minority languages, primarily Albanian. These activities are possible to coordinate through regional programs for translation support offered by the EU (IPA, cross border cooperation programs, other programs).

- the abovementioned measures will be undertaken with participation of competent public administration and local governance authorities, with coordinative role by the Ministry for Protection of Human and Minority Rights.

**Time Frame:** The issue of language with regard to exercising protection of minority rights can be seen from two aspects: the first one being a possibility of systemic resolution to the issue by passing special law on official use language(s), which would provide linear application of this regulation in all legislation areas, the other model implying harmonization of linguistic standard in procedural and substantive legislation through legislative interventions in different sector policies (administration, judiciary, education, etc.).

Depending on the model chosen, the deadline for passing the systemic law is **one year** from the Strategy adoption at most, and if the decision is made on harmonization of a number of systemic regulations, the maximum deadline is **two years, i.e. the end of 2009**.

## **2.4. Education**

This relates to teaching curriculums; lectures being given in minority languages; competency of the line ministry in coordination with the Ministry for Protection of Human and Minority Rights and competent non-governmental organizations with taking the following **measures and activities**:

**2.4.1. Pre-School, Primary and Secondary Education:** modification and harmonization of teaching scientific and educational programs with a view to introducing adequate program contents related to the culture, tradition, and history of minorities. This implies introduction of those contents as compulsory into the educational process at all levels. All the students, both members of minorities and majorities, should be taught those additional program contents. In addition:

- **optional classes of Albanian language** should be provided in primary and secondary schools in the capital and in environments where Albanians represent the majority;
- there should be **continuous provision of training of human resources** who teach languages, culture, history and tradition of minorities;
- legal and other measures should be made available to provide **full participation of parents in selection of program and lesson plans' educational contents**, in accordance with tradition;
- the continuous **cooperation with mother states of minorities** from Montenegro should be provided, aimed at the exchange of students and teachers;
- **promotion of principles of civil education**, as well as humanitarian values in the spirit of tradition, culture and history of minorities in educational programs;

- **participation of competent representatives of minorities** should be provided in **the work of competent institutions which define and adopt teaching scientific and educational programs**,
- involvement of student minority population representatives in **student participation bodies** (e.g. student parliament),
- **annual program and lesson plans of these activities** is defined by the line ministry responsible for education, in coordination with the Ministry for Human and Minority Rights;
- **less strict criteria** should be established in relation to **cost-efficiency of rural schools network** on locations populated by minorities;
- higher-quality level of education should be provided to minorities with regard to their studying the official language in Montenegro;
- broader profiles and specialization of secondary education in environments where a minority makes the majority, in order to ensure **traditional occupations of the minority to be preserved**;

**2.4.2. Provision of access to higher education to all, with application of the affirmative action principle, the following measures will be taken:**

- continuous **provision of school education and scholarships for human resources** at undergraduate, postgraduate and PhD levels; **state university** should consider the option of taking special measures aimed at enrollment of a number of students to this courses each school year;
- provision of school education and scholarships for human resources coming from minorities, aimed at their participation in political-administrative affairs of the state; this implies the obligation of the Faculty of Law, Faculty of Natural Sciences, Faculty of Economics of the University of Montenegro to set/create prerequisites for reaching **minority enrollment quotes** each year;
- promotion, i.e. creation of favorable conditions for engagement of certain number of associates (possibly teaching staff also) from a minority population, under an associate contract, with the state university;
- acceleration and facilitation of the **process of recognition** for university diplomas from the region;
- **institutionalization of cooperation with public higher-education institutions from neighboring countries**, aimed at exchanges of students, lecturers, researchers, organizing and developing joint projects in this contexts; the annual programs and lesson plans for this activity are adopted by the University of Montenegro (Univerzitet Crne Gore - UCG), in cooperation with two line ministries;
- allocation of funds from the UCG budget for scientific-research projects related to history, culture, language and tradition of minorities.

**Time Frame:** Having in mind the duration of the education cycle, the Strategy projects a maximum deadline of four years, which includes a possible legislative intervention, adoption or modification to the existing lesson plans and programs. A separate reason for setting such a deadline is said to be a need for implementation of these programs, most often carried out in the abovementioned deadline.



## 2.5. Culture (Tradition)

With the aim of promoting the culture of minorities, the following activities will be undertaken:

- **preservation of cultural heritage**, cultural and historical monuments, minority tradition, will be ensured by legal and other measures, which should be preceded by listing and registering of cultural-monument heritage, as a part of overall heritage of the state of Montenegro,
- taking specific measures aimed at **conservation and preservation of monuments** (sacral facilities, works of art, relics, folk dances, music, etc.), belonging to the minority culture,
- measures aimed at **categorization of minority culture monuments** (a significant percentage from the Minority Fund should be allocated for funding these activities);
- providing continuous presence and proper accessibility of the abovementioned cultural items to all citizens, especially through the media, and this especially through those media founded by the state;
- the line ministry responsible for culture, in cooperation with the Ministry for Protection of Human and Minority Rights and the Institute for Protection of Cultural Monuments, should implement the abovementioned measures in the sphere of culture with the engagement of non-governmental sector and international organizations, with special focus on cooperation with UNESCO;
- encouraging and **supporting the amateur cultural creativity in minorities**, especially in music and folk dances;
- providing financial support to **publishing periodicals**, with special focus on the literature of minorities;
- establishing **awards for best pupil works in minority languages** (literary works, poems, short stories, essays, anecdotes, etc.);
- these measures are aimed not only at protection of culture and cultural identity of minorities but also at preserving the overall cultural heritage of Montenegro;
- **cooperation with diaspora and associations** of emigrants.

**Time Frame :** In this sphere, the subject of activity is a current and continuous objective of the line Ministry and related institutions. Nevertheless, the Strategy defines a two-year deadline for carrying out the procedure of registration of cultural and monument fund and its categorization.

For the same period, a continuous task of all state authorities has been projected concerning promotion of the unique cultural heritage of Montenegro, which should be in the function of making the citizens closer to each other and of valorization of different ethno-cultural values, being simultaneously a model of imbuing aimed at raising awareness of tolerance, co-life and multi-ethnic, multi-confessional and multi-cultural harmony.

## 2.6. Informing

- for the needs of certain public broadcasting services, the **Radio Television of Montenegro (Radio Televizija Crne Gore - RTCG )** may establish **regional radio and television studios** with special obligation to produce and air regional programs and programs in minority languages;
- co-funding, by state and local government, **of radio and TV programs in minority languages**, which are important for the development of science, culture and informing;
- ensuring the application of special legal norms on establishment of working bodies within the management structure of the public service.
- Institutionalized participation of the minorities' representatives in the bodies, which determine the public service **programs**;
- **Re-airing** appropriate radio and TV programs of public services from neighboring states;
- Possibility of introducing a special channel within the public service, dedicated to the minorities;
- **In the state-founded printed media**, there should be a daily presence of minority-related contents, in minority language;
- in line with the money available by the Fund for Minorities, providing **co-funding of programs dedicated to minorities**.

**Time Frame:** Application of these measures should enable timely, full, objective, quality informing of minorities, especially on the issues vital for their status. Concerning the implementation of the Strategy goals in this area of activity, a one-year deadline has been projected. In this time, the work and role of public services, programs in public and private sectors, and encouragements to their multiculturalism will be analyzed, as well as the role of management and regulatory bodies.

In this period, the analysis will be carried out of a need to form a special channel at the public service, or to restore the existing channels and their programs, which would be in the function of extending the information broadcasts time dedicated to protection and affirmation of minorities and implementation of minority rights.

## 2.7. Collective Ethnic Identity

- full **normative regulation of free use and protection of national symbols** in compliance with the Constitution and valid international standards; these measures include various legislative activities, in different spheres of the national symbols' use, and especially the issue of criminal-law protection in this matter; these measures will be implemented in coordination of the Ministry of Justice and the Ministry for Protection of Human and Minority Rights, in the next two-year period;
- in the activities, special due **attention will be paid to the balance between the interests of minorities and interests of the community** – the state of Montenegro, as a whole;

**Time Frame:** This matter has been regulated by the Law. Considering the possibility to immediately intervene in one segment of the matter (establishment and use of national symbols) while respecting fundamental constitutional principles and international standards, the Strategy projects a **one-year** deadline for normative regulation of the matter.

Since parallel strategies set time schedules for implementing reforms in the area of criminal legislation, this segment (criminal-law and administrative-law protection) of action within minority policy has been given a two-year time schedule, the deadline covering the implementation of the monitoring of both segments' realization, i.e. reconsideration of any need to modify the existing Law, or passing a new one.

## **2.8. Political Participation and Representation in Authorities**

- **full legal regulation of election legislation** aimed at applying the constitutional provisions on political representation of minorities, based on the principle of affirmative action; this is one of top priority measures which should be taken by a separate working group which would include the representatives of minorities, the line ministry, and other public administration authorities competent in the issues; the process should include the **analysis of possibility to divide election legislation into state and local levels;**
- **encouragement to establishment and operation of the Ethnic Minority Council;** these activities include special measures to strengthen the process, where the state should control the legality, while minority communities should be exclusively vested with organizing and acting politically, with a view to preserving identity and promoting rights;
- **taking factual activities, aimed at proper representation of minority members in the executive and judicial power;** this implies long-term activities aimed at school education and rehabilitation of certain number of human resources out of minority representatives, with financial support by the state; the Commission for the Strategy Implementation will take care of this permanent objective along its duration and afterwards; in those activities, the attention will be paid to competence and reference, as well as to ethnic representation in the context of the overall public administration reform;
- for implementation of these measures it is necessary to set a **system of human resource records, with special focus on minority aspect of human resource records, in compliance with standards of personal data protection,** which puts those records in the function of their original purposes;
- **consistent application of Law on Local Governance and of decentralization principles,** especially regarding economy and finance, in order to ensure a high level of financial independence and self-sustainability of local government, in compliance with the Council of Europe's standards;
- special attention must be paid to an appropriate representation of minority members in the organizational structure of specific institutions such as the police, the National Security Agency and the army of Montenegro; this principle should be applied in

such a way that the representation is exercised in the entire Montenegrin territory, and not only in the environments where minorities make the majority of population;

- a **system of periodical reporting** will be established, the obligation holders indicated, for the purpose of monitoring the Strategy implementation;

**Time Frame:** The priority scope of action within political representation is a full and quality solution with regard to election legislation, with bringing up a model which would be the result of the widest possible political consensus, the framework contained in international standards. Simultaneously, the consensus may not be reached by outvoting in favor of political interest to the detriment of minority communities, and must reflect the real character of the affirmative action principle. Having in mind the period of full political activity at local and national level, the Strategy is based on a restrictive **six-month** deadline.

Regarding the proportional representation in public and local administration authorities, the Strategy projects a **one-year** deadline for creating **unique human resources registers, with special focus on minority aspect of human resources registers**, aimed at meeting this constitutional principle.

When it concerns the representation in judicial authorities, the Strategy is based on a uniform act within the judiciary reforms anticipating a **two-year** deadline (till the end of 2009) to set a **system of human resources registers, including their minority aspect**, as well as models of education of position-holders in judiciary.

These processes must start from a presupposition that a proper involvement of minority issue at the occasion of selection and education in judiciary (apart from quality requests and references of position-holders) represents the respect of the guaranteed constitutional principle in formal legal sense, while sociologically it makes a basis for earning further thrust of minority communities' members in the judiciary.

## **2.9. Development and Economic Policy**

- **drafting of planning documents**, which improve regional development and employment, especially in the areas populated by minorities, particularly in the North of Montenegro;
- **encouraging economic activities**, which are in the function of developing underdeveloped regions, mostly populated by ethnic minorities.
- **setting special protective mechanisms of social policy** at regional level, with special focus on the status of vulnerable groups (children, women, aged persons, persons with special needs);
- **decentralizing the social policy** (welfare system);
- **priority infrastructure development** (roads, energy, etc.);
- encouragement of loan placements to locally and regionally important projects;

**Time Frame:** In this area, it is not possible to set unique deadlines considering that they depend on a number of economic, political, demographic and other factors. Still, what can be said is that such action must take a form of continuous and consistent policy of economic development for certain areas, thus connecting the deadlines with short-term

and long-term measures within economic and social policy, but also with making immediate political, economic and investment decisions which are especially important for undeveloped areas mostly populated by minorities.

Very important deadline can be set for the launch of the Bar-Boljari road construction – a one-year deadline, the competent in which is the line Ministry of Traffic, Maritime and Communications - since this project is of extreme importance for all citizens of Montenegro.

### **Structural time frames in the Strategy concept**

Since the implementation of the Strategy is based on **development stages, periodical controls on the realization process** will be introduced during the implementation, based on exact and empirical studies and indicators (see *evaluation mechanisms*). The time schedules in the Strategy structure are projected for the periods of **one, two, three, five years, and the total duration of the Strategy i.e. ten years**, for which period it is envisaged to reach strategic goals related to cultural and sociological matrixes i.e. changes of negative attitudes in society.

### **3. Methods of Implementation**

#### **a) Interdisciplinary method – based on general concept of promotion, respect, protection and improvement of human and minority rights (HR approach)**

The Strategy implementation does not depart from the interdisciplinary approach model, since this model corresponds to the general request for respect, promotion and protection of human rights in general. Considering that the concept of human rights, including minority rights, implies much more than a mere normative legal framework for realization, the only possible solution, if wished to achieve any goal set by the Strategy, would be the interdisciplinary model of implementation, and involvement of a wide institutional and personal range of representation.

Human and minority rights are legal, political, sociological, cultural, demographic and every other phenomenon, with practically no precise and unique disciplinary framework. It is evident that the implementation will take place by certain dynamics in line with establishing and implementing priorities. The interdisciplinary method should equally enable a continuous multi-dimensional approach to the Strategy for a longer term, but should also offer answers as to which and what kind of priorities are needed from the aspect of their content, and whether such priorities are met from the point of quality and deadlines. Thus, the opinions of certain vocations, i.e. disciplines, will become more prominent when referring to the assessment of values and achievements of the Strategy itself.

In addition to evidently objective criteria which define the status of minority members, there is a whole series of subjective criteria which decide whether a person would declare its ethnic specifics. Since it is the matter of personal choice, it is very important to create

such a system of implementation which will allow completely free declaration on the issue, and further encourage persons to freely demand, use and protect the rights therein. On the other hand, it is necessary to make it clear, undeniable, needed, and (internationally and nationally) law-based request within all the dimensions (disciplines), which would also vest it with legal power in addition to general legitimacy.

Finally, the Strategy itself is a document with no power of a legal norm, which also requires much more engagement of various occupations in raising awareness of the need for its implementation.

**b) Conceptual approach (a comprehensive systemic approach, strategy as an inseparable whole, change in approach towards minorities – changes in society)**

Except for the material expression given in the form of this document, the constitutional framework, laws and by-laws, strategic documents, statistical data, numerical indicators, study results, etc., the Strategy implies a whole range of non-material values and elements such as ideas, moral, prejudices, spiritual freedoms, etc.

This approach is, in fact, taking into account all the elements, i.e. their consideration and the action aimed at improvement of situation. In short, this means that the approach represents a whole of different systems in a unique function of promotion, respect and protection of minority rights. On the other hand, the very fact that the minority rights are a sub-group of human rights, the purpose and aim of which is impossible to achieve without overall respect of all human rights, speaks in favor of the position that the Strategy implementation is impossible without an appropriate concept at a wider social, and not only political level.

The conceptual approach in the sense of research should further confirm the need for taking appropriate activities in the Strategy implementation. Its framework is built based on planning the future or using the existing resources: experiences, methods, behaviors, activities, relations among people, and projected goals wished to be achieved. Thus, e.g., the use of this approach could enable defining the nature, entities, historical background and sociological framework for improving multi-ethnic relations in Montenegro.

The greatest quality of this approach is that it makes a constant source of initiatives and the widest social ground for action. In short, the same problem may be seen from different angles of social reality, which gives this approach the additional quality in a complex understanding of the nature of minority rights and of the possibilities for action for their improvement. In any case, the conceptual approach must be in line with the highest sociological and cultural values of Montenegro, the ones often referred to by all social factors.

### **c) Integrated approach**

This approach is typical in a situation of social need for full coordination, as in this specific case where numerous factors are involved in the Strategy implementation, from public authorities, through academic institutions, to political factors and NGO sector. The aim of the integrated approach is to put the quantity of various factors into the function of promotion, respect and protection of human rights, i.e. an operational structure and functional representation of all the participants in the implementation process.

The integrated approach implies a wider participation of society, the majority population, public and other institutions, relevant stakeholder groups and individuals, especially in those fields where the priority goals of the Strategy are being pursued.

The integrated approach is to be ensured in all implementation stages with functionally divided specific roles in the subordination, coordination, realization, monitoring, and assessment of projected or achieved goals at all levels of power or social engagement.

The Strategy and its components must be above all party interests, expressing supra-party, inter-ethnic, inter-religious, and multicultural awareness of Montenegro. Its general goal is to get answers to key questions based on the integrated approach, the questions being: what is good, what is possible, and what is needed to do to keep the trend of tolerance and understanding, and what must be done in order to bring to light and neutralize, or decrease to the lowest degree the negative inheritance of the past, misconceptions and prejudice, and other negative phenomena.

The integrated approach must be based on the integral and participative approach to planning and implementing of defined measures and procedures, where the participative approach is seen as a pro-active approach to the partnership of all participants, without enforcing ready-made and unilateral solutions. At the same time, this requires consistency in taking responsibility for one's obligations, as well as promotion, respect and protection of minority rights, whether it be the public, private, or civil sector taking part in the process.

A prerequisite is that, in addition to public sector, the other two segments participate in the process based on their own interests or freely expressed will and goals they strive for. The fact is that the stability of ethnic relations must have a return effect upon all parts of society, its political and economic stability; therefore, it is justified to expect from the entities outside the public sector to be integrated and to take their share of responsibility, within their own limits, for the destiny of the community they live in. Still, the way of their inclusion, the level of the obligations, and the envisaged level of the Strategy implementation by all the involved must result from their final decision, and not from some imposed or superior initiative established by a prerogative of power. The primary goal of the Strategy is to motivate and engage the private and "the third sector" (civil society), aimed at its implementation.

In short, the result of the integrated approach should be a pattern for sustainable co-living, the final goal being to achieve well-being of each person (including the members of minorities) within the state sovereignty of Montenegro, based on principles of non-discrimination, tolerance, mutual respect, and democratic participation.

**d) Inter-ministerial and Sectoral Application (*comprehensive, integral and harmonized action of public institutions and local government authorities, with the involvement of international organizations and civil sector*)**

Duty to implement all human and minority rights is vested in state authorities, as primarily responsible for the respect and protection of human rights. The very organization of public authority is based on the division of competences at both central and local levels. In addition to the public and local administration, a number of public-law competences have been devolved to other organizations and agencies which execute them in the name of the state or as a separate independent regulatory bodies. In any case, their role still implies a certain level of influence in regulation of social relations in the broadest sense. Those bodies function based on the competences stipulated by the Constitution and law, where the basis used are the standards defined by the international and national law.

The Constitution of Montenegro stipulates a division of power into legislative, executive and judicial, where each has been limited by the Constitution and law. In addition, the relation among the branches of power is based on the balance and mutual control. Article 17 of the Constitution guarantees the exercise of rights and freedoms on the basis of Constitution and ratified international treaties. Previously, the Constitution stipulates that the ratified and promulgated international treaties and generally accepted rules of international law make an integral part of the national legal order, have priority over domestic legislation, and are directly applied where they regulate relations differently from the national legislation.

Article 79 of the Montenegrin Constitution guarantees a range of minority rights aimed at protection of the identity of their members (the expression, preservation, and development of their specifics; choice and use of national symbols; use of language and alphabet; education; establishment of religious and other associations; informing; proportional representation in governmental bodies at all levels, etc.). Although the Constitution uses the phrase: preservation of identity, it is easily brought to conclusion that a number of guaranteed rights very precisely refer also to specific political and civil rights of minority members. Even more because the purpose of the minority rights' protection is not only the preservation of identity, but much more: their full integration into the Montenegrin society, a sense of belonging to the state, and participation in the procedures of making decisions which affect themselves.

It is clear that in ensuring conditions for consistent and full respect of minority rights guaranteed by the Constitution and international documents can not mean the role of only one or several governmental bodies. Therefore, it is highly important for the functioning



of the minority rights system to establish competence or responsibility of certain public and local government authorities.

The Strategy anticipates the participation of very different authorities and establishes the concept of inter-ministry action as its organizational aspect, i.e. harmonization of sector policies on the issue of minority rights as a functional model. Stressing this division has been motivated by special reasons concerning a rational management of public resources through which the conditions are being created and the minority protection system made operational. In addition, the overall social capital and all social developments are being regulated through these authorities as well as sector policies from their competences.

In order for such system to be functional, without overlapping or colliding of different sector policies, it is necessary to form an inter-ministry body (envisaged by the Strategy as the Commission) as the institutional pillar, and central or line ministry public authority, which will initiate strategic directions of action and coordinate administrative measures to harmonize the work with other public authorities.

Since the Commission has the elements of supra-administrative character, the role of the Ministry for Protection of Human and Minority Rights would be not only a coordination one, but with specific legal competences and responsibilities, in accordance with regulations on the organization and manner of work of public administration.

The role of international factor should be in encouraging, assisting and supporting the Strategy goals, with the condition that its application reflects the achieved international standards, both in the quality (normative and real) and in the goals set to be reached. The international factor in such situation may also present a corrective element and an indicator of success.

Public and local government authorities must have a positive and primarily partnership approach towards civil sector. When it positively evaluates the measures undertaken, it makes a clear signal that the public authorities move within the limits of projected measures and goals, while in the opposite case they must be aware of the need to revise their own roles and goals set by the Strategy. Thus, the civil sector factually „executes power indirectly”, thus having objective accountability for the consequences of such acting. Otherwise, the lack of cooperation and partner relationship discredits the legitimacy of the state, and may also discredit the civil sector’s role at the national and international level (for the case of inactivity, inertness, or acting contrary to the standards of civil society and minority rights system).

#### **e) Focusing on target groups and the manner of exercising rights**

The valid legal framework in Montenegro has not defined/named collectivities exercising minority rights and precise territorial framework(s) where certain rights are guaranteed. It has been indirectly done in the provisions of certain legal texts from which it results that certain ethnic groups have special rights with regard to language and other characteristics, the most frequently in connection with the territory they live in.

Therefore, in taking position on the concept of minority rights through the Strategy, the benchmark must be statistics, i.e. the last census from 2003. In this text, the term benchmark has been used deliberately, since identity in the sense of declaration is a subjective and changeable category which cannot be determined by the attitude of state towards the issue. In favor of that fact, the chronology of censuses in this and the past century speaks clearly enough. The obligation of the state is to ensure exercising of rights to each person or collectivity who invokes to that fact, with respect of international standards and guarantees stipulated by the Constitution and law. In addition, the state is obliged to provide further guarantees at the level of recognized international and national standards which will improve the existing situation in the sphere of minority rights.

Focusing on certain minority groups, the Strategy starts from the fact that the principle of affirmative action is needed and wished as a form of returning thrust in the post-conflict society. The task of the state and its authorities at all levels of power (and of this Strategy, too) is to offer sufficiently convincing arguments by which such a principle would be established and its purpose determined. It cannot be understood as a limitation to the majority population's rights, which dominance reflects in the prevailing political will, and thus an advantage in making decisions concerning minorities. Therefore, this focus has been equally directed unto both minorities and the majority population members, since understanding them gives power to social compromise. A separate question would be in which spheres the affirmative action mechanisms should be set, i.e. which spheres of social and political action should be included. This must start from the principle of vested rights and the widest social consensus.

In the sense of **active recognition** of minority collectivities and their members, they have to be treated as equal participants and valid partners to the Government and other relevant bodies and institutions in the implementation of this Strategy. This especially refers to the decisions of vital importance for their identity, development and cultural survival. In that, there may not be distinctions as to the respect of only some dimensions of human rights, since the feeling of being threatened is most often derived as a consequence of disrespect for other human rights at the individual level. Therefore, the lowest common denominator for the majority and minority communities is the full participation of minorities in the decision-making process, from initiative to realization, with special attitude towards those issue which go deeply into ethnic (national) being and the survival of a minority and each of its members.

#### **4. Role and Tasks of Different Public and Social Factors**

##### **Process of the Strategy Development**

- Governmental authorities (Ministry for the Protection of Minority Rights in the Government of Montenegro), the University of Montenegro (the Faculty of Law, the Centre for Human Rights of the Faculty of Law), and civil sector (the Centre for Human and Minority Rights, Scholarship Foundation for the Roma)

- Consultative process (OSCE, the Council of Europe, Project for Ethnic Relations), Minority Rights in Practice – coalition NGO (CEZAM, CEDEM, NVO ASK, Nansen Dialogue Centre)

### **The Strategy adoption**

- The Government of Montenegro and its working bodies

### **The Strategy Implementation**

#### **Stakeholders:**

**Government** (provides funds for key activities from the budget, subordinates and coordinates the implementation activities in relation to other participants in the process)

#### **Ministry for the Protection of Human and Minority Rights**

- Planning, equipment, and implementation of measures from the Strategy
- Initiating and coordinating cooperation among participants in the process, at the national level
- Coordination of activities and communication with international organizations and institutions
- Coordination of measures' application with local government authorities
- Coordination of work and consulting with civil sector
- Projection of financial needs for the Strategy implementation
- Provision of consultative mechanisms for establishing communication between minorities and public institutions, as well as procedures for dispute resolution.
- Internal evaluation of the process in cooperation with minority groups and civil sector

**Commission for Implementation** (inter-ministry working body consisting of the representatives of line ministries and other public authorities, representatives of minorities and civil sector)

**Other inter-ministerial working bodies** which are obliged to implement minority rights in their action (the European integrations, reform of judiciary institutions, system of public administration reform, education reform, etc.)

**Ministries, public administration bodies and other authorities and organizations, agencies** (implementation of measures depending on the sector of their competences and the kind of activities)

**Local government authorities** (the competent working bodies of local government which have been delegated or devolved, by law or other act, the competences from the sphere of promotion and protection of minority rights)

Specific tasks of line and other authorities are to be formulated in plans and programs after the Strategy's adoption, since tasks of individual institutions result from its overall context. Note that the tasks are being primarily formulated for the public sector, since the Strategy, as a document of the public-law nature, may not determine tasks of entities which are outside the public-law competences and obligations.

## 5. Duration

The Strategy is adopted for a period of **ten years**. It is the time of the overall duration of the Strategy implementation, including all its segments. It is the time determined on the basis of:

- Analysis of the present state in social and normative context (international-law framework, integrations and their perspectives, legislation, statistical indicators, ethnic status, social developments, assessment of the situation)
- range and number of activities
- supposed number of entities envisaged by the Strategy
- gradual and systematic involvement of institutions
- preparation of conditions for the Strategy implementation
- time necessary for coordination and undertaking of operative measures
- developing financial framework for funding the Strategy and its individual parts
- creating social conditions (social environment) for implementation of the envisaged measures
- awareness raising the majority population and strengthening minorities in their requests for exercising the rights they are entitled to
- overcoming sociological and cultural obstacles
- need for harmonization of regulations with international standards
- standardization of legal practice

The projected **start of the applications of the measures**, i.e. the implementation, has been linked to the Government's decision on the adoption of the Strategy.

Once the decision is brought, there will be a **preliminary period**, during which the measures are to be taken in relation to becoming familiar with the content and goals of the Strategy, and holders of certain objectives and their role in the overall implementation process (anticipations and objective capacities). The duration of this stage is 6 months from the date of making the decision on the Strategy adoption.

The next (second) stage means the **implementation of priorities – key measures and activities**, which will be coordinated with other sector policies, which will be ensured by the Commission. Since the duration of this stage cannot be determined independently of

the realization of different sector policies, this document projects it to last for two years after the conclusion of the preliminary stage.

The dynamics of implementation in the rest of the term will be carried out depending on the achieved results and situation assessments after the **reporting periods**. For that purpose, the obligation has been imposed onto the Commission and line Ministry for the Protection of Human and Minority Rights to submit periodical reports (annually) to the Government of Montenegro on the degree of the Strategy implementation.

At the end of the projected stages of the implementation, the Commission submits a **special report for each stage**, based on the information provided by line ministries and other public authorities and organizations, local government authorities, and civil sector.

**The final (general) report on the Strategy realization is submitted at the end of the implementation period.**

In addition to the defined measures, the final report also contains:

- summary of projected and planned activities
- kind and number of unimplemented activities
- reasons for failing to implement projected and planned activities
- proposal of future activities after the conclusion of the implementation period (follow-up)

## **6. Evaluation Mechanisms**

The Strategy anticipates various evaluation mechanisms including reporting, statistical research and registers, empirical studies, normative-legal aspect of harmonization of national legislation with international standards, comparative analysis of the situation comparing to the initial implementation stage, public polls, participation of public expertise in the assessment of the implemented measures, and critical analysis of unimplemented measures of the Strategy.

▪ **The Commission** as an authority *sui generis*, apart from the competences in the Strategy implementation, is obliged to periodically report to the Government of Montenegro. Having in mind its composition, the reports are partially administrative in nature, but their contents certainly exceed by far a purely administrative framework, since they include numerous other factors and status indicators which identify the problems in execution and exercise of minority rights.

▪ **Statistical research** after 5 years and at the end of the implementation term indicates the numerical grounds that can be used for monitoring the status and success of the Strategy. Apart from the official statistics, the Strategy also takes, as relevant for processing, the data from all the other institutions where there are facts of importance for the implementation and its outcome.

- **Measurement of ethnic distance** (every three years) is a special model of empirical study which gives picture of inter-ethnic relations and provides ground for possible corrections in the Strategy

- **Indicators of the degree of harmonization of national regulations with international standards** imply at least two elements: 1) the level of governmental involvement in external implementation (signed or ratified, i.e. promulgated agreements); 2) the degree of harmonization of national regulations with international standards. In both cases, there is a need for an active approach in the assessment of national needs and capacities, where the relationship between legal matter and factual situation in Montenegro has been given special focus. For that purpose, the Strategy considers all forms of reporting on those issues

- **Measurement of indicators regarding the representation of minorities in governmental bodies** is a reflection of international standard and national constitutional-law framework. In its implementation, it is needed to establish reliable registers that will support the power of constitutional norm

- **Comparison of statistical and other data** with the situation on the implementation's starting date (education, culture, informing, etc) gives picture of success of the measures taken and an objective illustration of its dynamics

- **Occasional public polls** on the possibilities of participation and active involvement in making decisions which directly concern the minorities at all levels strengthen the participation process where minorities play a proper role

- **Involvement of expert and wider public in the assessment of the implemented measures and procedures** offers an additional degree of guarantee for the assessment of their constitutionality and legality, and of the respect of international standards

- **Analysis of unrealized measures (critical approach)** in this specific case serves for defining future steps, after the expiry of the Strategy implementation term.