

Opinion on the Action Plan for the Realisation of the Rights of National Minorities of the Republic of Serbia

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1. Introduction

The purpose of this Opinion is to evaluate the *Action Plan for the Realisation of the Rights of National Minorities* (hereinafter referred to as the Action Plan), prepared by the Republic of Serbia (hereinafter referred to as Serbia), and finalised in December 2015. The Action Plan seeks to plan future activities of Serbia in the field of minority protection, with a view to fulfilling recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities, as laid out in its *Third Opinion on Serbia, adopted on 28 November 2013*,² and recommendations of the Committee of Ministers as included in its *Resolution CM/ResCMN(2015)8 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia*, adopted on 1 July 2015.³ The Action Plan has been prepared in the context of Serbia's application for membership in the European Union, with a view to meeting a part of its *acquis* obligations under Chapter 23 on Judiciary and Fundamental Rights.

This Opinion is based on desk research alone, carried out upon receiving the Draft of the Action Plan prepared by the Working group on 9 December 2015. The Opinion is written based on the analysis of the Action Plan in Serbian, drafted on 9 December 2015, and the Third Opinion of the Advisory Committee on Serbia, as well as some other primary documents, such as the Framework Convention for the Protection of National Minorities⁴ (open for signature on 1 February 1995, entered into force on 1 February 1998). All references to the Action Plan are based on the Author's translation, and are typically not referred to as direct quotes but a relevant part of the Action Plan is added in brackets.

The Opinion is composed of six parts.

2. General overview of minority protection in Serbia

Whereas the overall legislative framework for national minority protection can offer to persons belonging to national minorities access to minority rights, some shortcomings prevent

¹ This Opinion has not been prepared on behalf of the Advisory Committee or the Secretariat of the Framework Convention for the Protection of National Minorities. The author has prepared this Opinion in her capacity as an independent expert on minority protection. She has not participated in drafting of the Third Opinion of the Advisory Committee, and this Opinion represents her views, and not necessarily those of the Advisory Committee or the Secretariat of the Framework Convention for the Protection of National Minorities.

² Available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Serbia_en.pdf.

³ Available at <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCMN%282015%29&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=BD8CF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

⁴ CETS No. 157, available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157>.

effective implementation in practice. In its Third Opinion on Serbia, the Advisory Committee acknowledged “commendable provisions aimed at promoting the protection of the rights of persons belonging to national minorities” and “significant efforts to develop comprehensive policies to promote equal opportunities for the Roma”, it also noted a lack of integration strategy, concerning inter-ethnic relations, and problems with regard to implementation of minority protection, particularly outside of Vojvodina and with respect to persons belonging to smaller minorities, some of these problems resulting from “flaws in the Law on National Councils of National Minorities, as well as conflicts with provisions of other laws”.⁵

The Action Plan (I. Current overview) seeks to address problems with regard to the implementation of the legal framework for the protection of national minorities in Serbia, and in particular to deal with inconsistencies in implementation.

3. Participation and transparency

The preparation of the Action Plan (I. Current overview), in all its phases, has been based on the government’s commitment to ensure full inclusion and participation of all relevant stakeholders, including representatives of national minorities and of the civil society, and on achieving full transparency in all phases – from drafting to its implementation and in the process of monitoring of its implementation. This is commendable.

One of the potentially biggest general weaknesses of the Action Plan, in its individual parts in specific issue-areas, lies in its insufficient attention being devoted to effective participation of persons belonging to national minorities or national minorities through their representatives in either the planned changes in minority protection, or in the process of implementation and its monitoring.⁶

4. Analysis of individual Sections of the Action Plan

Part four of the present Opinion follows the structure of the Action Plan, including its Sections I–XI, titled as: Personal scope of application of minority protection; Prohibition of discrimination; Area of culture and the media; Freedom of religion; The use of language and script; Education; Democratic participation; Adequate representation of persons belonging to national minorities in the public sector and public enterprises; National councils of national minorities; Economic status of persons belonging to national minorities; International co-operation.

4.I. Personal scope of application of minority protection

The Action Plan (I. Strategic objective) seeks to achieve a strategic objective of applying minority protection according to the personal principle and the autonomous self-identification of individuals as persons belonging to national minorities. Simultaneously, the Action Plan (*ibid.*) also seeks to improve mechanisms to enumerate persons belonging to national minorities and protect personal data of persons belonging to minority communities. By

⁵ Advisory Committee, Third Opinion on Serbia, Executive Summary.

⁶ For details where minority participation is not explicitly envisaged or where no detailed attention is paid to effective participation of national minorities, see specific sections below.

introducing the electronic register of the bodies and organizations in the public sector, which will enable a voluntary declaration of employees on their ethnicity, the Action Plan aims to enable data collection on representation of persons belonging to national minorities in the public administration, at the local level, in the police and the judiciary (see further below, part 4.VIII. on adequate representation of persons belonging to national minorities in the public sector and public enterprises). Upon a personal request, an individual will be able to enter his/her ethnicity into the civil registry.

This open and flexible approach to identification of (persons belonging to) national minorities *is fully in line with the general approach of the Advisory Committee* to the scope of application of the Framework Convention for the Protection of National Minorities. The free self-identification of individuals with a national minority is also one of the basic principles of the Framework Convention for the Protection of National Minorities, and the Action Plan follows this principle with regard to the planned legislative changes.

The Advisory Committee has welcomed Serbia's non-interference with regard to ethnic affiliation of persons belonging to national minorities, which seeks to prevent any imposition of an identity on individuals or communities, but it has also warned Serbia to exercise care "to ensure that prolonged controversies over identities do not deflect attention from the enjoyment of rights of persons belonging to the national minorities concerned."⁷ The Action Plan (I. Current overview) seeks to pursue the appropriate neutrality policy with regard to identity-related questions of minority communities, but it fails to address the issue of promoting a constructive dialogue between persons who identify themselves as Romanian and Vlach, and those who identify as belonging to the Croat and Bunjevci national minorities.⁸ Whereas the Action Plan upholds the approach based on free self-identification and the principle of state neutrality in identity-formation or identity existence, *it misses an opportunity to address some on-going issues with respect to disputed identities* as perceived by individuals belonging to above-mentioned national minorities.

The Action Plan further *fails to address the issue of citizenship* as a legal criterion for the definition of national minorities. Whereas the Advisory Committee has recognized efforts of Serbia to enable some non-citizens to enjoy some minority rights and to facilitate the acquisition of Serbian citizenship,⁹ it has invited Serbia "to consider reviewing the citizenship criterion included in the Law on National Minorities",¹⁰ and "to regularize the situation of persons whose citizenship and/or legal status remains unclear and for whom this may constitute an unnecessary obstacle to their exercise of the rights of national minorities."¹¹ The Action Plan does not envisage any change of the Law on National Minorities (i.e. the Law on Protection of Rights and Freedoms of National Minorities) with regard to the citizenship criterion, but it seeks to raise awareness, particularly among persons belonging to the Roma, Egyptian and Ashkali communities (REA), about their access to rights linked to their status and to offer them free legal help in this respect (Action Plan, Activity 1.9.). Furthermore, changes with regard to birth registry (Activities 1.3. and 1.8.) can provide a way to enable access to rights for persons belonging to national minorities regardless of their legal status. However, two issues require more attention with regard to Activities 1.3. (entry of data on

⁷ Advisory Committee, Third Opinion on Serbia, para. 12.

⁸ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 44.

⁹ Advisory Committee, Third Opinion on Serbia, para. 36.

¹⁰ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 37.

¹¹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 38.

ethnicity in birth registry) and 1.9. (information sharing among the REA on their rights as linked to their legal status).

With regard to entry of ethnicity into birth registry (Activity 1.3) and the changes of legal acts to this effect, all these legislative changes need to strictly follow the principle of free self-identification of persons belonging to national minorities, which includes also the right to change such self-identification. The Action Plan does not address this issue. Although (representatives of) national minorities cannot carry out such changes in legal acts, it is particularly important to secure their continuous and effective participation in the process. An effective participation of (representatives of) national minorities is particularly important in Activity 1.1. on the changes of the Law on National Minorities with regard to entry of data on ethnicity (belonging to national minorities) in public registers, personal data collections and official records. The Action Plan fails to specify participation of (representatives of) national minorities in the activities listed in Section I.

With regard to the Activity 1.9 on information-sharing among the REA on their rights as linked to their legal status, the Action Plan does not mention any awareness-raising campaigns among persons belonging to these communities to seek the free-of-charge legal help available to them, or any special funds to help them collect the documents or overcome other obstacles in sorting out of their personal legal status. A special Action Plan on the Roma is being prepared and the Government plans to accept it in December 2015 (on the Roma/REA see further below, Part 5. of this Opinion).

In terms of verification of the overall strategic objective of Section I of the Action Plan (I. Strategic objective), *independent studies* could be added as an additional source for collecting and verifying the data gathered by the authorities, particularly in the wake of the envisaged changes of the legislation, and in the context of the boycott of the 2011 census by the Albanian minority, which led the Advisory Committee to recommend that the authorities “maintain a close dialogue with representatives of the Albanian minority to ensure that alternative data sources, including independent research data, are appropriately consulted.”¹² The Action Plan does not specify any specific measures to this effect, and it remains *silent on independent data collection*, as well as on minority participation with regard to the personal scope of application of minority protection and self-identification of individuals as persons belonging to national minorities. As a general rule, in this issue-area, *any changes in legislation and decisions on policy require effective consultation with and participation of persons belonging to national minorities*.

When referring to collecting the data on the number of persons belonging to national minorities, the Action Plan (I. Strategic objective) refers to the principle of personal data protection in general and with regard to specific actions (e.g. Activity 1.5. on the process of updating of information in the Special Voters List), and to the principle of confidentiality (with regard to improvements of the Special Voters List of national minorities in Activity 1.4.), it does not address explicitly the concerns of the Advisory Committee regarding “the collection and processing of sensitive personal data relating in particular to individuals’ ethnic affiliation, language and religion” and the conditions for “the Commissioner for Information of Public Importance and Personal Data Protection to fulfil his tasks efficiently.”¹³

¹² Advisory Committee, Third Opinion on Serbia, Recommendation in para. 49.

¹³ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 52.

Whereas training of employees in units of local self-government envisaged in Activity 1.5. is commendable, the impact indicator is set in terms of the number of such trainings and the number of employees attending them, rather than in terms of a certain percentage of all employees who will undergo such trainings in a set time-frame.

4.II. Prohibition of discrimination

The Action Plan (II. Current overview) aims to improve the position of most vulnerable social groups, including national minorities. To this effect, Serbia has adopted an Action Plan for the implementation of the Strategy of Prevention and Protection against Discrimination for the Period from 2014 to 2018, and it has established a Council for the monitoring of the implementation of the mentioned Action Plan. The government now seeks to carry out trainings of the judiciary and the policy so as to make prosecution of hate crimes more effective. The present Action Plan (*ibid.*) further specifies a number of activities aimed at the general public, all with a view to reaching the strategic objection of Section II, i.e. to ensure, in the entire territory of Serbia, equal rights and freedoms of persons belonging to national minorities under equal conditions, to develop tolerance and prevent discrimination.

According to the Advisory Committee, the 2009 Law on the Prohibition of Discrimination “has significantly strengthened the legal framework in place regarding the promotion of effective equality and protection from discrimination on grounds inter alia of skin colour, citizenship, national affiliation or ethnic origin, language and religious beliefs”.¹⁴ However, the Advisory Committee also noted the need to further clarify the scope of the Law in the areas of housing and social protection,¹⁵ and called on the authorities to amend the Law if necessary to enable persons belonging to national minorities to bring claims of discrimination in these two fields,¹⁶ as well as to remove “all undue citizenship requirements [...] from constitutional and criminal law provisions relevant to the protection of national minorities”,¹⁷ namely with respect to the right of individuals to address international institutions on protection of minority rights.¹⁸ The Action Plan *does not address either of these two concerns* of the Advisory Committee. Neither does the Action Plan envisage any measures to remove the possible ambiguity with regard to understanding of any special measures for achieving full equality as non-discrimination, and the provision in Article 76 of the Constitution, which adds a condition for this to be the case.¹⁹

Whereas the Commission for the Protection of Equality, the Ombudsman and Provincial Ombudsman have been dealing with cases of discrimination based on ethnicity, these institutions have been hampered by insufficient staff, lack of awareness of the legislation among the general public and by the non-expeditious follow-up of their recommendations by the authorities.²⁰ The Advisory Committee has urged “the authorities at all levels to give rapid and complete follow-up to the findings and recommendations” of these institutions,²¹ to provide for adequate conditions for the functioning of these institutions to handle the

¹⁴ Advisory Committee, Third Opinion on Serbia, para. 18.

¹⁵ Advisory Committee, Third Opinion on Serbia, para. 18.

¹⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 56.

¹⁷ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 57.

¹⁸ Advisory Committee, Third Opinion on Serbia, para. 55.

¹⁹ Advisory Committee, Third Opinion on Serbia, paras. 59–60 and Recommendation in para. 61.

²⁰ Advisory Committee, Third Opinion on Serbia, para. 19.

²¹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 69.

complaints efficiently,²² and to “adopt measures aimed at collecting reliable data on discrimination in all relevant fields”.²³ The Action Plan addresses these concerns directly, in Activity 2.1., although it does not specify what measures are envisaged as ‘adequate support’ (the Action Plan does not mention anything about adequate premises, staff). It is particularly commendable that all measures in Section II. of the Action Plan *include awareness raising among the general public*, and – where relevant – among persons belonging to national minorities, and among public administration and officials. This includes awareness raising on the rights of national minorities (Activity 2.2.). Whereas Activity 2.2. is crucial, result indicators focus more on quantitative measures, *rather than also on qualitative indicators*. For example, minutes in public broadcasters dedicated to raising awareness of minority rights should be complemented by an assessment of quality of such programmes (given that the media reporting on national minorities has been characterized by either reporting on sensational events and incidents, or by portraying of minorities “as mere folklore”,²⁴ see Section 4.III. further below) and independent analysis of their effects on the general public. To achieve adequate awareness of national minorities and their rights among the general population, and to promote tolerance and inter-cultural understanding through the media, trainings of journalists are required,²⁵ but such activities are not envisaged in the Action Plan (either in this Section or in Section III. of the Action Plan addressing the area of culture and the media). Furthermore, the Action Plan *does not mention* that such programmes, public discussions and promotional materials *will be prepared in co-operation with representatives of national minorities* (see Section 4.III. further below).

Whereas “[l]evels of sympathy amongst the population for protecting the language rights of persons belonging to national minorities are relatively high”,²⁶ the Advisory Committee has expressed its concern about inter-ethnic relations in general, particularly about “a strong and regrettably persistent sense of ethnic distance between different national groups”,²⁷ and a lack of trust and a perception of abandonment among minorities living in difficult socio-economic environment and furthest from the capital.²⁸ Furthermore, xenophobia, religious intolerance, prejudice against the Roma, racism, violent attacks and inter-ethnic incidents and other hate-motivated offences are present in Serbia.²⁹ The Advisory Committee has urged the Serbian authorities “to ensure that the criminal justice system adequately addresses hate crimes, by preventing, thoroughly investigating and prosecuting acts of violence targeting persons belonging to national minorities”, and to raise awareness of the police, prosecutors and the judiciary about hate-motivated offences.³⁰

The Action Plan provides measures to address hate speech in the media (Activity 2.3.; it is regrettable that this action focuses on the media and does not appear to encompass also the social networks where hate speech is particularly wide-spread in modern societies; acts on the internet are mentioned only in the context of Activity 2.7.); to initialize procedures in cases of hate speech (Activity 2.4.); and to raise awareness through trainings of all relevant actors in the prosecution of hate crimes and to strengthen such prosecution (Activities 2.5., 2.6. and 2.7.). These are all *very comprehensive and crucial measures*, and the intention of the

²² Advisory Committee, Third Opinion on Serbia, Recommendation in para. 70.

²³ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 71.

²⁴ Advisory Committee, Third Opinion on Serbia, para. 109.

²⁵ Advisory Committee, Third Opinion on Serbia, Recommendations in paras. 111 and 112.

²⁶ Advisory Committee, Third Opinion on Serbia, paras. 23, 100 and 101.

²⁷ Advisory Committee, Third Opinion on Serbia, para. 94.

²⁸ Advisory Committee, Third Opinion on Serbia, para. 93.

²⁹ Advisory Committee, Third Opinion on Serbia, paras. 23, 100 and 101.

³⁰ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 105.

government to effectively address the problems of hate speech and hate crimes would be strengthened by adopting an explicit aim on *zero tolerance* towards such actions. In this respect, the impact indicator for Activity 2.6. (i.e. a lower number of acts of violence and hate speech directed at persons belonging to national minorities) could be *complemented* by an increased number of complaints brought to the relevant institutions (based on awareness raising about zero tolerance towards such acts), and not just by the number of actions to be taken by the judiciary (Activity 2.7.), but also by doing this *efficiently* given that slow and ineffective procedures have been of concern to the Advisory Committee.³¹

The Action Plan *does not include any special measures on the police* in this area, nor does it envisage any activity “aimed at ensuring that police forces adequately reflect the ethnic diversity of the population in the region where they operate.”³² Similarly, the Action Plan *does not include any activity on guaranteeing effective and independent supervision* to deal with cases of police misconduct.³³

4.III. Area of culture and the media

The Action Plan (III. Strategic objective) sets a very ambitious, yet comprehensive and appropriate strategic objective in the area of culture and the media. Namely, Serbia will seek to improve the situation in the media and develop media content of interest for persons belonging to national minorities by providing for information in minority languages that is qualitatively and quantitatively suitable, territorially accessible and financially supported by the state. It will further enable the development of the culture of minority communities and of intercultural dialogue. This strategic objective is supported by a number of *concrete activities and a commitment to allocate sufficient funds, at the state, provincial and local levels*, to carry out those activities and meet to strategic objective. Although this Section of the Action Plan is comprehensive, ambitious and concrete, with a specified commitment by the government to provide for sufficient financial means, it is unfortunate that the development of the media contents *does not pay sufficient/explicit attention to the integration of the Serbian society, which would be based on the promotion of national minorities as an integral part of the Serbian society*, in addition to promoting tolerance. Participation of national minorities is ambiguous in the Action Plan: whereas the identification of an adequate media model, with different modalities, as laid out in Activity 3.1. explicitly requires an inclusive process and consultation with national minorities (though effective participation would be more adequate), representatives of national minorities are not mentioned among the actors that will verify (and evaluate) the achievement of the otherwise well-defined goals of the Action Plan (Section III.). Although national councils of national minorities are listed as one of the principle implementing body of the Action Plan, it would be advisable to explicitly mention minority participation in individual activities where their effective participation is particularly crucial.

The Action Plan (III. Current overview) comprehensively pays attention to the vast majority of concerns of the Advisory Committee, including the issue of access to information for persons belonging to national minorities (in their minority languages, by forming their own media and by receiving information in the two public broadcasting companies), the problematic issue of media privatization, participation of minority representatives in this area, and the issue of financing. The Action Plan in its Section III. focuses largely on the media,

³¹ Advisory Committee, Third Opinion on Serbia, para. 102.

³² Advisory Committee, Third Opinion on Serbia, Recommendation in para. 106.

³³ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 107.

and it does not specify other activities planned for the promotion of minority cultures, except regular public tenders for the development of culture and art of national minorities listed as impact indicator of the strategic objective (III. Impact indicator).

Whereas the 2009 Law on National Councils of National Minorities, which entrusted national minority councils with key competences in the area of culture, successfully addressed the previously existing lack of clarity with regard to competences, funds and their distribution in the area of culture. However, as about 30 per cent of all funds are awarded equally between all relevant national minority councils and the remaining 70 per cent according to the number of persons represented in individual councils and according to the number of councils' institutions, the Advisory Committee has noted that this "weakens the situation of numerically smaller and more recently recognized minorities".³⁴ The same applies to the project-based funding provided by the Ministry of Culture, which "hampers the financing of long-term activities."³⁵ Furthermore, at the time of the adoption of its Third Opinion, the State Fund for National Minorities was not operative, which negatively affected the possibility to carry out intercultural activities, rather than focusing on single minorities.³⁶ Activity 3.4. seeks to raise awareness of the general public on the rights of national minorities and on cultural and linguistic diversity in Serbia, as promoted through media contents (in the mainstream media). This *promotion of culture and tolerance*, supported by budgetary means, is most commendable, but the Action Plan *does not explicitly address the issue of editorial independence*. Also, it is regrettable that the Action Plan does not adopt the approach to integration of the Serbian society, which would be symbolically shown in a more pro-active language of promotion of minority cultures and languages *as an integral part of the Serbian society*. The Action Plan does not provide any information on access of the general public to the media contents in minority languages, by providing for subtitles, for example. Such an explicit goal would provide for an opportunity for the majority population and individual national minorities to bridge the existing divide between them.

The Action Plan (Section III.) pays attention to *sufficient and stable financing*, although Serbia is aware that it is yet to secure a more stable financing for print media in minority languages outside of Vojvodina (III. Current overview). The Advisory Committee indeed observed regional inequalities between minorities whereby the level of support for their cultural activities was much lower for national minorities not living in Vojvodina where such support was significantly higher and it included also provincial funding not available for minorities in other parts of Serbia, whereas the Roma were particularly disadvantaged as they could rely solely on international donors.³⁷ The Advisory Committee has also emphasized consistently that both print media and broadcasting media play an important role "in ensuring that persons belonging to national minorities are able to exercise in practice their right to information".³⁸ The Advisory Committee recommended that more attention be paid to allocate support for national minorities in a more even manner that would enable also numerically smaller communities to benefit fully from those funding opportunities, and to make the State Fund for National Minorities fully operative, with adequate involvement of national minorities, and with the extension of funds for the preservation of culture to other actors, such as the civil society, NGOs (and not just national minority councils).³⁹ The Action

³⁴ Advisory Committee, Third Opinion on Serbia, para. 86.

³⁵ Advisory Committee, Third Opinion on Serbia, para. 22.

³⁶ Advisory Committee, Third Opinion on Serbia, para. 87.

³⁷ Advisory Committee, Third Opinion on Serbia, para. 88.

³⁸ Advisory Committee, Third Opinion on Serbia, para. 133.

³⁹ Advisory Committee, Third Opinion on Serbia, Recommendations in paras. 89 and 90.

Plan does not specifically address these concerns of the Advisory Committee, and it is not clear if they can be addressed indirectly, through the activities planned in Section III. Regrettably, the Action Plan *does not mention the Roma and no special measures are planned for addressing their cultural and media needs and interests* (see further on this in Part 5. below). The Action Plan (III. Current overview) accepts that the civil society media are not numerous and lack sufficient financial support.

Whereas support to print media in minority languages is available in Vojvodina and “a significant amount of broadcasting in minority languages continues to be available across Serbia”, the Advisory Committee observed concerns of national minority representations “about the possible impact of privatization, digitalization and the mooted abolition of television licence fees on the availability of such broadcasting” in minority languages, on media pluralism and on editorial independence.⁴⁰ The Action Plan *addresses minority concerns about media privatization*, by providing the legislative framework that secures the same media contents and time-slots, including in minority languages, for five years after privatization as they existed in programme schemes 12 months before the entry into force of the Law on Public Information and the Media (III. Current overview; Activities 3.1., 3.2. and 3.3.). The Action Plan (Activity 3.1.) further envisages regular analyses, in consultation with national minorities, of the impact of privatization and digitalization on media in minority languages. It is particularly commendable that the media owned by national councils of national minorities are to be *exempt from the privatization process* (Activity 3.1.), which *promises to address the concerns of smaller communities* whose media may not be commercially viable.⁴¹

The Advisory Committee also observed a lack of interest in minority daily concerns in the mainstream media and found the approach to reporting on such issues problematic,⁴² as the reporting is largely driven by the coverage of conflictual events or by the portrayal of “minorities as mere folklore”.⁴³ Whereas the Action Plan *does not specifically address this concern*, the phrasing of Activity 3.4. (see also above) seems to direct attention to providing access to information to the general public on minority cultures and languages and on minority rights. Regrettably, *no trainings for journalists and media editors are envisaged* in Section III. of the Action Plan, although the Advisory Committee has persistently encouraged the authorities “to promote the development of professional training, including vocational training, of journalists belonging to national minorities.”⁴⁴

It is particularly welcomed that the Action Plan envisages *more media contents in minority languages* in the Public Broadcasting Service (Activity 3.6.), while securing the right of persons belonging to national minorities to full and objective information in their minority languages, and that those contents be made *available in the entire territory of Serbia*, through the system of cable operators (Activity 3.7.). This is commendable and in line with the Advisory Committee’s recommendation to the authorities to increase “opportunities for reaching dispersed minorities”, while preserving local broadcasting for concentrated minorities.⁴⁵

⁴⁰ Advisory Committee, Third Opinion on Serbia, paras. 29 and 126.

⁴¹ Advisory Committee, Third Opinion on Serbia, para. 126 and Recommendation in para. 128.

⁴² Advisory Committee, Third Opinion on Serbia, para. 29.

⁴³ Advisory Committee, Third Opinion on Serbia, para. 109.

⁴⁴ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 112.

⁴⁵ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 135.

The Advisory Committee also recommended the strengthening of the monitoring work of the Council of the Republic Broadcasting Agency and the review of “the manner in which its members are designated with a view to ensuring that national minority perspectives are adequately represented.”⁴⁶ Whereas the Action Plan *does not address the competences of the Council*, it addresses the issue of *minority participation* in several ways (III. Current overview): one member of the Council represents national councils of national minorities (and participation of national minority councils in the work of the Council based on clear selection criteria – see Activity 3.3.) and the general director of a public broadcaster is required to *obtain an opinion* of a national council of a national minority on candidates for the editor of the programme in minority language of that national minority before the general director submits his/her proposal for the appointment of the editor to the management board. The opinion is not mandatory. It is not clear how effective will be the envisaged participation of national minorities in the election of the members of the Council (Activity 3.8.), but the efforts in the Action Plan *to secure greater participation of national minorities* in the area of the media are notable.

4.IV. Freedom of religion

The Action Plan (IV. Current overview) recognises the need to conduct a comparative legal analysis on the status of churches and religious communities, which will take into account the state of affairs (status and best practices) in Serbia's neighbouring countries, including those who are members of the European Union. The Action Plan (*ibid.*) further promises a dialogue with the Serbian Orthodox Church on the use of minority languages in religious services, although Serbia maintains its neutrality in the area of religious issues. In line with the strategic objective in Section IV. of the Action Plan (i.e. to respect religious freedom in the context of the establishment and registration of religious communities, based on the principle of state neutrality/separation of the state and religious communities), the general goals are to guarantee freedom of religion in law and in practice and to seek pragmatic solutions for access of persons belonging to national minorities to religious services in their minority languages.

Whereas any independent analysis is generally helpful when assessing minority rights, it has to be borne in mind that the *responsibility for minority protection lies with the state* with national minorities. This is one of the principles of the Framework Convention for the Protection of National Minorities. The Advisory Committee has always emphasised that the concrete solutions have to be based on *actual needs*, and they should provide for *effective access to rights of persons belonging to national minorities*. In this context, *pragmatic solutions, sought in consultative with representatives of national minorities concerned, are to be welcomed*. Unfortunately, the Action Plan (IV. Source of verification) does not explicitly envisage participation of the communities concerned in the verification process. Specific activities (Activities 4.1., 4.2. and 4.3.) are to be carried out by the Office for co-operation with churches and religious communities, and a pragmatic approach is to be found through a dialogue between churches (Activity 4.3.). No explicit participation of (representatives of) national minorities is envisaged.

The Action Plan thus generally follows the approach by the Advisory Committee, which has been concerned, together with domestic actors (the Ombudsman), about the legal position of

⁴⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 134.

churches and religious communities.⁴⁷ Whereas the Advisory Committee has acknowledged “that there are complex issues of Orthodox canon law at that [...] and that the constitutional principle of separation between the State and religion makes interference by the authorities in such matters exceptionally sensitive”, it has also noted “that in practice, the absence of action by the state authorities in this field may ultimately give rise to issues of compatibility with international standards on freedom of religion.”⁴⁸ The legal analysis, and the implementation of its recommendations in practice (Activities 4.1. and 4.2.), promises to *address the concerns* about the status of churches and religious communities in Serbia.

The Advisory Committee has further urged the authorities to ensure the right to establish religious institutions, and to seek actively pragmatic solutions where these could resolve problems related to access of persons belonging to national minorities to worship in their minority language.⁴⁹ The dialogue among the churches (Activity 4.3.) is to be welcomed, but without active participation of the national minorities concerned, the specific needs of persons belonging to those national minorities may not be addressed. *Effective participation of persons belonging to national minorities concerned is therefore notably missing* in Section IV. of the Action Plan.

4.V. The use of language and script

The Action Plan (V. Strategic objective) aims to achieve the strategic objective to protect fully the right to use minority language and script, while flexibly introducing minority languages to official use, and to provide sufficient finances to this effect. The results are expected in all aspects of the use of minority languages and scripts – from personal names, in official use to topographical indications. Whereas the Action Plan *follows recommendations* of the Advisory Committee, *participation of (representatives of) national minorities is not explicitly envisaged* to evaluate the implementation and results of all activities, or in the process of determining the actual needs in this area.

With regard to the use of names and surnames in minority languages and scripts, the Advisory Committee has observed suitable legal solutions but problems in practice, and it has accordingly recommended the authorities to “intensify their efforts to train officers of the Registry of Births, Deaths and Marriages as to the contents and proper application of the rules currently applicable in this field”.⁵⁰ The Action Plan envisages Activities 5.1., 5.2. and 5.3. to this effect. These activities include the improvement of the work of local self-governments, in the *entire territory* of Serbia, in this field; training of registrars and their deputies; and intensified supervision of the actual implementation of this right of persons belonging to national minorities. Finances to this effect are to be secured in the state budget.

The Advisory Committee has welcomed the legislative changes that have addressed the previously existing legal inconsistencies relating the use of minority languages and script,⁵¹ but it has also observed the uneven implementation of the right to use minority languages in contact with the authorities at the local level, a slower progress in introducing minority languages in official use outside of Vojvodina, a lack of staff proficient in minority languages

⁴⁷ Advisory Committee, Third Opinion on Serbia, paras. 118–121.

⁴⁸ Advisory Committee, Third Opinion on Serbia, para. 121.

⁴⁹ Advisory Committee, Third Opinion on Serbia, Recommendations in paras. 122 and 123.

⁵⁰ Advisory Committee, Third Opinion on Serbia, paras. 143 and 144 and Recommendation in para. 146.

⁵¹ Advisory Committee, Third Opinion on Serbia, para. 137.

where these are in official use and a lack of sufficient resources for translation of official documents in minority languages.⁵² The Advisory Committee has recommended a flexible application (in terms of traditional settlement of persons belonging to national minorities) of the threshold (15 per cent) for the official use of minority languages, to recruit civil servants at the local level who are proficient in minority languages, provide sufficient resources and raise awareness so that persons belonging to national minorities can exercise their rights effectively.⁵³

The Action Plan *addresses these concerns and recommendations* of the Advisory Committee. In particular, Activity 5.5. upholds *the flexible approach to the introduction of minority languages in official use* in areas where minorities live traditionally. Participation of (representatives of) national minorities in determining such areas of their traditional settlement and their needs in the field of use of language and script would further guarantee effective exercise of minority rights in this field. Activity 5.4. aims at securing and dispersing *sufficient funds* for the official use of minority languages in practice. Whereas budgetary lines are to be secured at the state, provincial and local levels, and these funds are to be supplemented by public tenders, it is not clear what percentage is sought to be guaranteed on a permanent basis, in budgets.

It is particularly positive that the Action Plan (Activities 5.9. and 5.10.) envisages *translation* for minority languages in official use in units of local self-government and *access to electronic information, services and documents* available at E-Administration in minority languages in official use in units of local self-government. Commendable, both activities (i.e. Activities 5.9. and 5.10.) *will be financed from the state budget* and their implementation will thus not depend on (non)availability of funds in local budgets (the same applies to Activity 5.8. on the use of minority languages in the judiciary). The Action Plan also seeks to *raise awareness* (Activity 5.7.) among persons belonging to national minorities to effectively use their linguistic rights in contacts with units of local self-government, whereby a comprehensive set of measures, involving public officials, publication of information on the right to use minority languages and a public campaign, will be financed from the state budget.

With regard to toponyms, the Advisory Committee has emphasised “the importance of promoting bilingualism in signposts as a means of conveying the message that a given territory is shared in harmony by various population groups.”⁵⁴ Whereas the Advisory Committee has noted positive developments in this field,⁵⁵ it has recommended that “the authorities take the necessary measures to ensure that all local authorities where a minority language or languages are in official use comply with their obligation to display topographical indications in the relevant minority language or languages.”⁵⁶ The Action Plan (Activity 5.6.) addresses this recommendation and envisages *a legislative change* (the Law on the Official Use of Languages and Scripts) so that topographical and other indications be displayed also in a minority language in areas where persons belonging to the minority account for 15 per cent (according to the last census). As with regard the official use of minority languages in units of local self-government, *a flexible approach is to be recommended in the implementation of this right*, taking into account traditional settlement of persons belonging to national minorities and a sufficient demand (in line with Article 11, para. 3, of the Framework Convention).

⁵² Advisory Committee, Third Opinion on Serbia, paras. 138 and 139.

⁵³ Advisory Committee, Third Opinion on Serbia, Recommendations in paras. 140 and 141.

⁵⁴ Advisory Committee, Third Opinion on Serbia, para. 149.

⁵⁵ Advisory Committee, Third Opinion on Serbia, para. 148.

⁵⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 150.

4.VI. Education

The Action Plan (VI. Strategic objective) aims to improve the position and to encourage the realisation of the rights of persons belonging to national minorities in the field of education. The Action Plan identifies two models that exist of present, and a number of obstacles (as spelled out by the Advisory Committee, see below), including the insufficient proficiency in the Serbian language of a part of the teaching staff in Serbia and of some pupils belonging to different national minorities. The Action Plan identifies two core problems in this field: insufficient implementation of the existing legislation as well insufficient regulations of some aspects of education in Serbia. *The Action Plan thus envisages much greater changes than suggested by the Advisory Committee.*

In the area of education, the Advisory Committee has paid special attention to teacher training and textbooks (in context of Article 12 of the Framework Convention for the Protection of National Minorities)⁵⁷ and to teaching in and of minority languages (in the context of Article 14 of the Framework Convention for the Protection of National Minorities). Despite a number of measures in place to secure teachers training and textbooks for teaching in and of minority languages, the Advisory Committee has observed a number of obstacles, such as insufficient funds, low circulation of those textbooks, lengthy process leading to the actual distribution of textbooks and lack of harmonisation with the school syllabus in Serbia.⁵⁸ It has further observed some problems in availability of teachers for learning in or of minority languages, caused also by the lack of professional teacher training programmes, including at universities.⁵⁹ Accordingly, the Advisory Committee has recommended that the authorities “step up their efforts to ensure that the availability of textbooks in minority languages adequately reflects the needs expressed by national minorities”, by effectively addressing the existing obstacles,⁶⁰ and to ensure “adequate opportunities for teacher training of teaching in and of minority languages [...] and that the demands of national minorities in this regard are rapidly followed up.”⁶¹

With regard to teaching in and of minority languages the Advisory Committee has established that the “number of schools providing such instruction and the number of pupils receiving it varies widely depending on the situation of the various national minorities concerned.”⁶² Whereas it has welcomed “the broad offer of teaching in and of minority languages available in Serbia”, the Advisory Committee has also identified a number of obstacles, such as the need to carry out formal surveys to establish the demand, lack of political at the local level, resistance of some school principals, inconvenient times and places of such classes and the lack of adequate textbooks.⁶³ It has encouraged the Serbian authorities “to continue providing

⁵⁷ In the context of Article 12, the Advisory Committee has also commented on the situation of the Roma in the education sphere (Advisory Committee, Third Opinion on Serbia, paras. 158–162) and to the issue of recognition of diplomas and equal opportunities in access to higher education (Advisory Committee, Third Opinion on Serbia, paras. 163–168), neither of which is dealt with in the Action Plan. The recognition of diplomas in general is subject of Activity 6.10.

⁵⁸ Advisory Committee, Third Opinion on Serbia, para. 154.

⁵⁹ Advisory Committee, Third Opinion on Serbia, para. 155.

⁶⁰ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 156.

⁶¹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 157.

⁶² Advisory Committee, Third Opinion on Serbia, para. 171.

⁶³ Advisory Committee, Third Opinion on Serbia, para. 172.

education in minority languages and to ensure that restrictions are reduced” and to “remove all unnecessary obstacles to the exercise of the right to education in minority languages”.⁶⁴

The Action Plan addresses above-mentioned issues (textbooks, teacher training, education in and of minority languages), but *as part of the broad reform of education* as applicable to the learning in and of minority languages. The specific activities are thus *numerous and gradual*, ranging from a comprehensive analysis of different models of education, state of affairs in Serbia with recommendations to introduce new models of education (Activity 6.1.), the formation of a group on minority language education (Activity 6.2.), the development and application of a model of minority language education through the legislative changes (Activity 6.3.), the monitoring of quality of minority language education (Activity 6.4.), the improvement of teacher training enabling teachers to gain the competence in minority language and in Serbian (Activity 6.5.), further development of minority language teacher training (Activity 6.6.), teacher training for Serbian as a second language (Activity 6.7.), the development of language standard for Serbian as a second language and its implementation (Activity 6.8.), the implementation of the programme for teaching Serbian as the second language (Activity 6.9.), recognition of foreign higher education degrees (Activity 6.10.), the availability of textbooks and didactic materials (Activity 6.11.), changes of the Law on Higher Education so as to provide for professional help for teaching of terminology in the languages of national minorities (Activity 6.12.), the optimisation of the network of schools and classes with minority language teaching (6.13.), strengthening the capacity of professional and inspection services (Activity 6.14.), enhancing the educational role of schools in developing tolerance and preventing segregation (6.15.), bilateral co-operation including the signing of bilateral agreements with ‘kin-states’ and co-operation with regards to teachers and textbooks (Activities 6.16., 6.17., 6.18. and 6.19.), the advancement of the status of elective course ‘mother tongue/language with elements of national culture’ in primary and secondary schools (Activity 6.20.), the campaign to inform children and parents on popularisation of various models of minority language education (Activity 6.21.), and the introduction of an elective course ‘language of the social milieu (language of a national minority)’.

This comprehensive list of activities can be interpreted both *as providing an opportunity* to improve the present state of affairs with regard to access of persons belonging to national minorities to learn their minority language and be fluent in the Serbian language, and as *potentially posing further and new obstacles* to their access to minority rights in the field of education.

The gradual approach, based on a comprehensive analysis as the first step, is to be welcomed. So is *participation of national minorities* (through national councils of national minorities) as partners in this activity (Activity 6.1.). However, among the numerous activities such national minority participation is explicitly spelled out only in Activity 6.11. on textbooks and didactic materials and in the very important Activity 6.15. on strengthening the educational role of schools in developing tolerance and preventing segregation. Continuous and effective *participation of national minorities is particularly important*, and the Action Plan should explicitly mention it, at least with regard to the optimisation of the network of schools (Activity 6.13.) so as to prevent the occurrence of new obstacles in access to rights of persons belonging to national minorities and to effectively participate in the development of new criteria for opening of minority language classes.

⁶⁴ Advisory Committee, Third Opinion on Serbia, Recommendations in paras. 174 and 175, respectively.

Whereas *bilateral co-operation* can contribute to the fulfilment of the strategic objective in the field of education (as well as contribute to promotion of tolerance, stability and peace in the region, see below 4.XI. on international co-operation), *this should not negatively affect access to rights of persons belonging to national minorities without a 'kin-state'*.

In general and in line with the Framework Convention for the Protection of National Minorities (Article 14), this comprehensive reform should be carried out with a view to ensuring, where there is sufficient demand, *adequate opportunities for persons belonging to national minorities in education in and of minority languages, in close co-operation and effective participation of (representatives of) national minorities*. More attention should be devoted to what Activity 6.15. defines as *educational role* of schools in the sense of schools actively seeking ways to prevent, rather than enable, segregation and developing programmes on *multiculturalism and integration of the Serbian society as a whole*.

4.VII. Democratic participation

In its Section on democratic participation, the Action Plan (VII. Strategic objective) sets a strategic objective to develop effective mechanisms of democratic participation of national minorities. This includes effective participation of national minorities in the electoral process and their adequate representation in elected bodies at national, provincial and local levels. The mechanism to achieve this is the legislative change, which includes a plan to change the Constitution. The Action Plan specifies activities to this effect that start with a comprehensive legal analysis (Activity 7.1.), identification of best practices of democratic participation of national minorities, including numerically smaller ones (Activity 7.2.) and measures to change the normative framework for democratic participation of national minorities in Serbia (Activities 7.3. and 7.4.).

This strategic objective and the corresponding activities seek to *address the existing different opportunities* for different national minorities for democratic participation, with notable differences as persistently identified by the Advisory Committee,⁶⁵ *between numerically bigger and numerically smaller communities*. To achieve the strategic objective, *effective participation* of national minorities has to start with the very activities planned in the Action Plan and Activities 7.1. (the legal analysis) and 7.2. (identification of potential models) *envisage co-ordination with national councils of national minorities*.

This Section of the Action Plan thus *directly fulfils the recommendation* of the Advisory Committee, in which it has encouraged the Serbian authorities to continue promoting effective participation of national minorities in electoral process, but also to “promote a more effective participation of numerically smaller national minorities in elected bodies at national level”,⁶⁶ whereas it is unclear if, or to what extent, the Action Plan also aims to address the Advisory Committee’s recommendation to “consider reviewing the provisions in place regarding the election of members of parliament in order to avoid abuse of the more flexible provisions regarding national minority parties”.⁶⁷

⁶⁵ Advisory Committee, Third Opinion on Serbia, paras. 176, 179 and Recommendation in para. 180.

⁶⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 180.

⁶⁷ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 180.

4.VIII. Adequate representation of persons belonging to national minorities in the public sector and public enterprises

The Action Plan (VIII. Strategic objective) aims to take measures to collect comprehensive information on representation of national minorities in public administration at all levels, in full respect of personal data protection, and implement decisive measures to address underrepresentation of national minorities in public administration and public enterprises. The goal is to achieve adequate/proportional representation of national minorities in public administration at all levels. This goal *directly addresses the identified concerns* of the Advisory Committee.

Namely, the Advisory Committee has found it difficult to assess the issue of adequate representation of national minorities in public administration due to a lack of data.⁶⁸ Still, it has been able to establish that relatively few problems appear with the participation of minorities in local administrative bodies in areas “where persons belonging to national minorities live compactly”, but they “remain significantly under-represented in state-level public administrations and public enterprises.”⁶⁹ Further, there are differences also between persons belonging to different minorities, in public administration, the judiciary and the police.⁷⁰ Accordingly, the Advisory Committee has reiterated the need to collect data, while fully respecting international standards on personal data collection (see above, part 4.I.),⁷¹ and “to take vigorous measures to address the under-representation of national minorities in public administration, particularly at state level”, in the judiciary, and “to create a multi-ethnic police force” as well as ensure adequate representation of national minorities in the police force (especially Bosniacs).⁷²

The achievement of the strategic objective in this section of the Action Plan will begin by legislative change of the Law on National Minorities, with a view to enabling the introduction of *affirmative action in employment in the public sector* (Activity 8.1.). Continuous consultation of minority representatives is important in this process. A comprehensive analysis of the situation is to be carried out with a view to determining the criteria and standards for prescribing adequate representation of national minorities in particular parts of the public sector (Activity 8.2.), which does not explicitly envisage participation of national minorities. Further legislative changes are envisaged on employment in autonomous regions and units of local self-government (Activity 8.4.), and these activities should be carried out in *consultation with minority representatives*. This activity includes the introduction of keeping personal records, which will include information of employee’s education in minority languages. Further, minority language proficiency is to be regulated, and defined as a condition for occupying certain post, with a view to guaranteeing access to the right to use minority language in communication with public administration where the minority language is in official use in a unit of local self-government (Activity 8.5.). This is a very important measure and *consultation* with (representatives of) national minorities has to be secured throughout the duration of this activity.

With regard to the judiciary, an analysis of the situation (Activity 8.6.) is to be followed by the development of the criteria and standards for the assessment of qualification, competence

⁶⁸ Advisory Committee, Third Opinion on Serbia, para. 182.

⁶⁹ Advisory Committee, Third Opinion on Serbia, para. 183.

⁷⁰ Advisory Committee, Third Opinion on Serbia, paras. 183–185.

⁷¹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 186.

⁷² Advisory Committee, Third Opinion on Serbia, Recommendation in para. 187.

and trustworthiness of candidates for prosecutorial functions and for judges (Actions 8.7. and 8.8.). Importantly, these activities seek to secure adequate representation of national minorities and linguistic competence in national minority languages in use in courts. Further activities are planned to evaluate access of national minorities to the judicial system (Activity 8.9.), to provide for the training of judges (Activity 8.12.), to organise a joint workshop on access of national minorities to legal aid (Activity 8.10.) and to organise a roundtable on final recommendations on the improvement of relations with the civil society and on access of national minorities to the judicial system (Activity 8.11.). The two latter activities are the only activities in this section of the Action Plan that specifically envisage *participation* of representatives of national minorities.

Several promotional activities (Activities 8.13., 8.14., 8.15., 8.16. and 8.17.) address minority representation in the police force. Language courses, of both Serbian and minority languages, are to be offered (Activities 8.18. and 8.19.). All these activities appear to be largely focused on promotion, and are to be carried out by the Ministry of the Interior. It is *difficult to expect that such activities can lead to multi-ethnic composition of the police force* as recommended by the Advisory Committee, or indeed to a more adequate representation in the police force of persons belonging to national minorities that are presently under-represented in the police. No participation of national minorities, the civil society or other actors is envisaged.

Whereas full implementation of the Law on the Central Registry of Employees in the Public Sector and Public Enterprises that will ensure credible data on national minority representation is envisaged for end of 2017 (Activity 8.20.), the Government is committed to follow with a preparation of *a four-year plan of employment* of persons belonging to national minorities in public sector and public enterprises, including as a result of *affirmative measures* taken to reach their adequate representation. This is an important step towards securing adequate representation of persons belonging to minorities, that takes into account the need to collect the data, prepare the registry and finally a four-year plan to meet the target.

4.IX. National councils of national minorities

The Action Plan (IX. Strategic objective) seeks to improve the status and operation of national councils of national minorities. This objective is both very important and very demanding, given the challenges stemming from the Law on National Councils of National Minorities as well as the status of national councils of national minorities as a form of minority self-government (Action Plan, IX. Current overview).

The Action Plan (*ibid.*) recognises that individual provisions of the Law on National Councils of National Minorities are not in conformity with the Constitution (as established by the Constitutional Court in 2014) and that there are a number of difficulties with its implementation in practice. These have been known for a while. Thus, the Advisory Committee has welcomed the enactment in 2009 of the Law on National Council of National Minorities, which has been recognised as setting up “a generous system in favour of national minority councils, covering a range of fields and granting the councils very wide-ranging competences”,⁷³ but it has also observed “serious problems regarding its implementation in practice”.⁷⁴ Indeed, several initiatives for its constitutional review (as well as the decision of the Constitutional Court in 2014) have signalled a certain level of dissatisfaction with the Law

⁷³ Advisory Committee, Third Opinion on Serbia, para. 190.

⁷⁴ Advisory Committee, Third Opinion on Serbia, para. 190.

and uncertainty about the effects of some decisions of councils.⁷⁵ The Advisory Committee has itself strongly encouraged the authorities to revise the Law, “in close consultation with representatives of all national minorities and of civil society.”⁷⁶

The Action Plan (IX. Current overview) *directly follows this recommendation* of the Advisory Committee and envisages either a drafting of a new law or a thorough revision of the existing Law, which will be harmonised with other regulations in Serbia’s legal system. Additionally, the Action Plan (*ibid.*) sets to prepare a by-law on the operation of the Fund for national minorities (established in accordance with the Law on National Minorities) for the promotion of social, economic, cultural and general development of national minorities. With the operationalisation of the Fund for national minorities national council of national minorities could finally *benefit from the existence of the Fund*.

Given the commitment of the Government to *thoroughly revise* the Law on National Councils of National Minorities or adopt a new law, the already identified problematic aspects of the present Law need to be recalled and duly addressed.

The Advisory Committee has noted “that many of the difficulties that have arisen in the implementation of the Law flow directly from contradictions between this Law and other legislation”, with one of the most significant problems being the declaration by a national minority council of an institution of particular interest to the national minority council concerned.⁷⁷ The latter, which affects the disbursement of funds, “leaves broad scope for abuse of this right”, and the Law does not address how possible conflicts can be resolved.⁷⁸

As with regard to other aspects of minority rights in Serbia, the Advisory Committee has also observed regional inequalities between national minority councils, whereby national minority councils of (numerically smaller) national minorities outside of Vojvodina are left behind as they do not receive funds from a provincial budget.⁷⁹

Importantly, national minority councils – set up only at the national level (and not local level), one for each national minority – have affected recognition and respect of diversity within individual national minorities, whereas the entire national minority council system “may lead to fragmentation in the representation of minorities, in so far as each council represents only the interests of a single national minority and little has been done to encourage co-operation between various councils.”⁸⁰ To counterbalance these potential problems, the Advisory Committee has promoted the establishment of councils for inter-ethnic relations in all units of local self-government with an ethnically mixed population.⁸¹ This would complement national minority councils, and also address the observed phenomenon of politicisation of some national minority councils.⁸² Any revision of the Law would need to be based on a broad involvement of national minorities and the civil society.⁸³

⁷⁵ Advisory Committee, Third Opinion on Serbia, para. 190.

⁷⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 200.

⁷⁷ Advisory Committee, Third Opinion on Serbia, para. 194.

⁷⁸ Advisory Committee, Third Opinion on Serbia, para. 194.

⁷⁹ Advisory Committee, Third Opinion on Serbia, para. 195.

⁸⁰ Advisory Committee, Third Opinion on Serbia, para. 196.

⁸¹ Advisory Committee, Third Opinion on Serbia, para. 197 and Recommendation in para. 202.

⁸² Advisory Committee, Third Opinion on Serbia, para. 198.

⁸³ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 200, see also para. 199.

With a view to improving the status and operation of national councils of national minorities the Action Plan (IX. Impact indicator) requires the creation of *a proper legal framework, operationalisation of the budget fund* for national minorities. Additionally, the Action Plan (*ibid.*) also expects *an increased number of councils for inter-ethnic relations in ethnically mixed municipalities*. The latter indicator directly corresponds to the recommendation of the Advisory Committee, which has promoted such council in *all* ethnically mixed units of local self-government, which is the purpose of Activity 9.10.

The demanding strategic objective of the Action Plan in the field of national councils of national minorities is to be achieved through ten activities (Action Plan, Activities 9.1.–9.10.), beginning with an analysis of the legal framework for minority protection in Serbia, with a special focus on financial aspects of the framework at the national, provincial and local levels (Activity 9.1.). In line with the recommendation of the Advisory Committee on the involvement of national minorities and the civil society in the process of addressing the problems surrounding the Law on National Councils of National Minorities, Activity 9.2. envisages a round table, *with a broad participation* of all national councils of national minorities, the interested expert community and NGOs, addressing the contentious aspects of the implementation of the Law and formulating recommendations. Similarly, a multi-sectoral working group that is to draft a new Law on National Councils of National Minorities is to enable *active participation of national councils of national minorities* (Activity 9.3.).

In terms of addressing several concerns of the Advisory Committee, Activity 9.4. is particularly important. Not only does it envisage a revision of the existing Law or the drafting of a new one based on the analysis and recommendations of the working group (i.e. based on the outcomes of Activities 9.1. and 9.3.), but it seeks to draft such legislation on national councils of national minorities that will *ensure these councils to fully contribute to the integrated society*. Such an integrated society is to be developed, among others, by national councils acting as institutions responsible for *improving societal integration*, by *decreasing the politicisation of national councils* (with rules on division of powers and the principle of incompatibility of high political functions with the function in a national council of national minorities), and by *increasing co-operation* between state bodies and national councils and among the national councils of national minorities.

Further, regulations on fund allocation from the state budget for the functioning of national councils and for fund allocation are to be adopted (Activities 9.5. and 9.6.); necessary financial resources for the Budget Fund for national minorities is to be secured for various programme activities and projects of national minority councils and NGOs dealing with national minority issues (Activity 9.7.). Importantly, training is to be provided for national councils of national minorities on, among others, protection from discrimination, anti-discrimination legislation and on recognition of types of and grounds for discrimination, and their management and financial reporting capacities are to be strengthened (Activity 9.8.).

As recommended by the Advisory Committee, the Action Plan (Activities 9.9. and 9.10.) further aims to strengthen inter-ethnic relations, by renewing the work of the Council for National Minorities and by paving the way for the creation of councils for inter-ethnic relations in all ethnically mixed municipalities. Funds for the functioning of those councils are to be secured in budgets of units of local self-government, and the process of their formation is to be supervised and such supervision paid by the state budget (Activity 9.10.).

The reform of the legislation on national councils of national minorities *should address the specific concerns* of the Advisory Committee (see above) so that the identified problems (e.g. the self-identification of persons belonging to minorities and diversity within national minorities, but also regional disparities) do not persevere.

4.X. Economic status of persons belonging to national minorities

The Action Plan (X. Current overview) pays special attention to securing access to minority rights for those persons belonging to national minorities who live in less developed areas of Serbia where their socio-economic situation is very difficult. Serbia thus aims to improve the economic situation of persons belonging to minority communities (Action Plan, X. Strategic objective). Special attention is devoted to *improving the economic status of the Roma*, by increasing their access to the labour market (in line with the new strategy on the Roma, see Part 5. below), and *the economic situation* in Eastern Serbia, municipalities of Preševo, Bujanovac and Medveđa (Action Plan, X. Overall result). Two continuous activities are envisaged to this effect: strengthening the economic position of the Roma through the full implementation of the action plan for implementing a new Roma strategy (Activity 10.1.) and economic recovery and development of underdeveloped regions traditionally inhabited by persons belonging to national minorities through a recovery of firms, support to small and medium enterprises and attracting investment (Activity 10.2.). Here, investment of ‘kin-states’ of minorities living in such areas is somewhat expected (Action Plan, X. Current overview) although the envisaged activities in this Section of the Action Plan are to be financed from the state budget, and possibly IPA funds.

The Advisory Committee has stressed continuously that increased attention needs to be paid to the situation of persons belonging to national minorities who live in economically less developed areas of Serbia.⁸⁴ The Advisory Committee has also emphasised that in addition to adopting positive measures aimed at addressing the situation of persons belonging to national minorities in less developed regions, such measures should be designed, implemented and evaluated with a due involvement of and consultation with representative of those minorities.⁸⁵ Unfortunately, the present Action Plan *does not specify how representatives of national minorities in those regions will be involved in the planned activities.*

4.XI. International co-operation

With a view to improving minority protection in the region, the Action Plan (XI. Current overview) seeks effectively to implement the existing bilateral agreements through a more active work of bilateral committees, but also to intensify informal cross-border co-operation, expand the network of countries with bilateral agreements, and to promote tolerance, prosperity, stability and peace in the region. Although the Action Plan (*ibid.*) somewhat unfortunately assumes that the conclusion of bilateral agreements involves protection of rights of a certain national minority in Serbia and of Serbs in the other state party to the bilateral agreement, which limits a possible number of such agreements, its concrete activities broaden this by planning *to conclude bilateral and multilateral agreements on issues of importance to the region or inter-state relations, such as minority protection* (Activity 11.1.).

⁸⁴ Advisory Committee, Third Opinion on Serbia, para. 203, see also Recommendation in para. 207.

⁸⁵ Advisory Committee, Third Opinion on Serbia, para. 205, see also Recommendation in para. 208.

The Action Plan (XI. Strategic objective) thus aims to promote international co-operation between Serbia and ‘kin-states’ of Serbia’s national minorities, in terms of the position of national minorities. Such active international co-operation is to be achieved through meetings of bilateral committees, implementation of their recommendations, activities to strengthen regional co-operation and various workshops and conference on exchange of views on and experience with best practices in the area of minority protection (Action Plan, XI. Result indicator). Regional seminars and workshops/conferences on exchange of best practices as well as on issues such as dealing with history (Activities 11.2. and 11.3.) are particularly important, and participation of the civil society is explicitly planned (Activity 11.3.). Participation of persons belonging to national minorities (in Activity 11.2., for example) would be beneficial.

Activities 11.4. and 11.5. seek to improve the *functioning and efficiency of bilateral committees*, whereas Activity 11.6. aims to *raise awareness* on possibilities and significance of cross-border co-operation of units of local self-government.

This list of activities is *fully in line with a general recommendation* of the Advisory Committee in which it has encouraged “the authorities to pursue their efforts with respect to regional co-operation and dialogue.”⁸⁶ For bilateral agreements and informal cross-border co-operation “can contribute to the promotion of the rights of persons belonging to national minorities and of tolerance, prosperity, stability and peace in the region.”⁸⁷

5. Missing issues and issues insufficiently addressed in the Action Plan

The most notable omission in the Action Plan (when the latter is compared with the Advisory Committee’s Third Opinion on Serbia) is the set of issues applicable to the Roma, except in Section X. of the Action Plan on the Economic status of persons belonging to minority communities). The Government has initiated the process of adopting a new Roma Inclusion Strategy in the Republic of Serbia for a ten year period (2015–2025), which is to be adopted by the end of 2015 and which is to replace the previous document titled the “Strategy for Improving the Status of Roma 2009–2015”. Whereas the new Roma Inclusion Strategy has not been evaluated in the present Opinion, it would be important for Roma issues to be mainstreamed into minority protection and minority politics, with a view to recognising their double minority status (as a social and a national minority) and enabling them access to the rights of persons belonging to national minorities, in addition to equality and non-discrimination in all areas of life.

The present Action Plan addresses the issue of internally displaced in Activity 1.9. of Section I., by informing the REA on their rights related to their personal status and to strengthen free legal help to them (see more above, Part 4.I. of this Opinion). The Advisory Committee has noted some 210,000 internally displaced persons of whom one in five is reportedly belonging to a minority, mostly the Roma.⁸⁸ This is a particularly vulnerable population and it is important “to find durable solutions for these persons, including local integration, and to address their lack of personal documentation as a matter of priority.”⁸⁹ It is expected that the new Roma Inclusion Strategy will specify further measures for addressing this problem.

⁸⁶ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 212.

⁸⁷ Advisory Committee, Third Opinion on Serbia, para. 211.

⁸⁸ Advisory Committee, Third Opinion on Serbia, para. 114.

⁸⁹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 116.

The present Action Plan is also silent on the issue of recognition of diplomas issued by educational institutions in Kosovo*⁹⁰ and in the region. Whereas some progress in this field has been made, the Advisory Committee's recommendation to ensure that such diplomas "are duly and rapidly recognised" is to be recalled.⁹¹

6. Conclusion

The Action Plan provides a very comprehensive set of activities aimed at fully implementing the Framework Convention for the Protection of National Minorities and thus addressing the existing concerns and possible improvements as laid down by the Advisory Committee. Financial sources are clearly earmarked, and actors responsible for and participating in carrying out the numerous activities are identified. Overall, the Action Plan addresses many issues as identified by the Advisory Committee, but some are not addressed or are addressed partially, as seen in the present Opinion.

With regard to the ambitious and positive set of planned activities as specified in the Action Plan, four issues require further attention.

Firstly, the Action Plan can be improved by explicitly mentioning consultation with and effective participation of (representatives of) national minorities, particularly where such representation is not secured through their general participation in various working groups, or where such participation is particularly beneficial. As mentioned throughout the Opinion, their participation would be most warranted in initial stages (to identify their needs) and also at the evaluation stage, which could be used by the relevant authorities to re-define the measures so as to address possible problems in the implementation of individual activities that could not be envisaged during the drafting of the Action Plan. Many activities can only be carried out by the relevant authorities, but this should not prevent their active consultation with (representatives of) national minorities.

Secondly, vague provisions in terms of finances: whereas sources of finances allocated to carry out individual activities are clearly and thoroughly identified (state budget, provincial and local budgets), the Action Plan does not specify concrete sums. One of the biggest fears in the implementation of the Action Plan is possible insufficient funds available to implement it.

Thirdly, vaguely defined indicators: every activity is matched with the body/bodies responsible for its realisation, with a deadline, financial resources and impact indicators, but the latter are typically defined in very general terms. For example, a number of trainings as an impact indicator is welcomed, but it provides no information as to how many such trainings are to be carried out, or what percentage of the potential trainees (e.g. registrars and deputy registrars in Activity 5.2.) are to benefit from such training.

Fourthly and very importantly, the Action Plan does not pay sufficient attention to integration of the Serbian society as a whole, which would be based on the promotion of national

⁹⁰ Any reference to Kosovo, whether to the territory, institutions or populations, in this text shall be understood in full compliance with United National Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁹¹ Advisory Committee, Third Opinion on Serbia, Recommendation in para. 167.

minorities as an integral part of the Serbian society. A more pro-active language and policy approach to promotion of minority cultures and languages as an integral part of the Serbian society is desired. The pro-active approach to the integration of the society as a whole and to the promotion of minority cultures as an integral part of the Serbian society is particularly important in education and the media.