

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

Prepared by **Dr. Petra Roter**, an independent expert¹

Introduction

The purpose of this Additional Opinion is to evaluate the *revised Action Plan for the Realisation of the Rights of National Minorities* (hereinafter referred to as the revised Action Plan), prepared by the Republic of Serbia (hereinafter referred to as Serbia), and submitted on 14 January 2016.

Since the submission of the Opinion on the Action Plan for the Realisation of the Rights of National Minorities of the Republic of Serbia on 22 December 2015, Serbia has demonstrated a constructive approach to revising the Action Plan, and providing a written *Overview of the recent changes & rationale behind the changes*, both sent on 14 January 2016. Some issues have been dealt with in greater details and have addressed the concerns expressed with regard to the Action Plan (submitted on 9 December 2015) in the initial Opinion on the Action Plan from 22 December 2015. Other issues, however, have either not been addressed or have been addressed partially. This Additional Opinion evaluates the revised Action Plan from 14 January 2016 from the perspective of the identified weaknesses in the Action Plan from 9 December 2015. The present Additional Opinion therefore seeks to evaluate how the identified issues have been subsequently addressed in the revised Action Plan. As the present Additional Opinion does not evaluate the entire Action Plan, this Additional Opinion needs to be read together with the initial Opinion from 22 December 2015 (see attached).

General overview of minority protection

In its newly added Introduction, the revised Action Plan very helpfully explains the context of minority protection in Serbia – both in the sense that the Action Plan seeks to address the problems with regard to the implementation of minority rights in Serbia as identified by international institutions, including the Advisory Committee (Framework Convention for the Protection of National Minorities), the Committee of Experts (European Charter for Regional or Minority Languages) and by experts (expert mission on national minorities) of the European Commission. Importantly, the Action Plan has been designed as a mid-term strategic document, whose content is in line with other relevant strategic documents (in the context of Chapter 23) as listed at the end of the newly added Introduction to the Action Plan.

Methodology for the preparation of the Action Plan

¹ This Additional 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 Additional Opinion in her capacity as an independent expert on minority protection. She has not participated in drafting of the Third Opinion on Serbia, adopted by the Advisory Committee on 28 November 2013 (hereinafter referred to as the Third Opinion on Serbia), and this Additional 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.

The revised Action Plan helpfully explains the methodology applied for the preparation of the final document. It is commendable that representatives of national minorities were included in the process and in the Working Group, and that decisions were adopted by consensus.

The section on Methodology explains the functioning of the Working Group, the involvement of state institutions, national minorities and experts. With regard to the later, however, the explanation about the national expert is partly misleading, given that national expert was selected by the Ministry of Justice to provide support to the Working Group, as specified in the Contract, with only his remuneration being provided by the Council of Europe. In this context his role at meetings of the working Group was operational rather than substantive.

This section on Methodology explains the composition of the Action Plan in terms of chapters, chapter-based strategic goals, results, indications and ways of their verification, as well as the timing and budgetary means dedicated to individual activities. It is commendable that while defining specific activities, the Action Plan has been prepared as a combination of the needed changes of the normative and institutional framework, improvement of the administrative capacities, as well as achieving better practices and awareness-raising. The Action Plan has further sought to define actors responsible for meeting the specific objectives.

Minority participation

The newly added part on Methodology pays more attention to minority participation – not just in the preparation of the Action Plan, but also in its implementation. In particular, “active participation of representatives of national minorities is envisaged in all working groups that will work on legislative changes affecting, fully or partially, national minorities” (revised Action Plan, Methodology for the preparation of the Action Plan). Further, representatives of national minorities have been envisaged as partners in many activities and as actors monitoring the implementation of the Action Plan (*ibid.*). Whereas there is room for improvement of their participation (see further below), it is important that the overall goal of minority participation is to “seek a greater visibility of national minorities as an integral part of the Serbian society as to promote the integration of society as a whole” (*ibid.*).

It is to be welcome that the Council for National Minorities has been entrusted with the monitoring power of the implementation of the Action Plan and its numerous activities (Action Plan, Monitoring of the implementation of the Action Plan). The Council for National Minorities, as a working body of the Government, will meet at least four times a year. This offers a suitable structure for representatives of national minorities to participate effectively in the implementation of the Action Plan.

It should be borne in mind that effective participation of national minorities is not guaranteed by their presence alone, and it should be encouraged, promoted and secured by a continuous commitment of the Government to this effect. In this context, the revised Action Plan pays more attention in terms of specifying national minorities (national councils of national minorities) as partners or participants of individual activities. It will be important to secure their *effective* participation, guaranteeing their voice to be heard.

The Office for Human and Minority Rights is to collect the data on the implementation of the Action Plan quarterly, and it is to send them to the Council for National Minorities and to the Co-ordination of the national councils of national minorities (*ibid.*). The latter, however, is an informal body, without any legal basis in Serbian legislation. As such, this does not appear to be the most suitable way to monitor the implementation of the Action Plan. More efforts should be devoted to

communication with and involvement of *each* national council of national minorities, particularly because different national minorities may have different concerns and different views on how the implementation of the Action Plan has affected them. This is particularly important given the vast differences in minority protection between different national minorities, living in different parts of Serbia (as noted by the Advisory Committee).

I. Personal scope of application of minority protection

Whereas it is commendable that the issue of citizenship forms an important part of the new Roma Inclusion Strategy (to be adopted soon), the issue of citizenship as observed by the Advisory Committee does not refer solely to the Roma, Egyptians and Ashkali (REA), but to persons belonging to these and other national minorities. Citizenship should not be an obstacle for persons belonging to national minorities to their access to minority rights.

Notably, more attention has been devoted to data protection, but the very collection and verification of data on national minorities could be regularly supplemented by independent scholarly studies.

II. Prohibition of discrimination

The Government plans to strengthen the institutional and legislative capacities of the relevant institutions, in the context of the main Action Plan for Chapter 23.

Whereas the addition of the social networks as a means for spreading hate speech and intolerance has been added to the Action Plan, the latter still offers more room for improvement in terms qualitative indicators (in addition to the newly added opinion poll) verified by independent analyses. Also, explicit participation of persons belonging to national minorities or of minority representatives would be important in the field of awareness raising among the general public.

Unfortunately, the revised Action Plan includes no special measures on the police in this area, their ethnic composition and on effective and independent supervision of the police to deal with cases of police misconduct.

III. Area of culture and the media

Some steps have been made in the revised Action Plan on the issue of integration of the Serbian society, which is based on the promotion of national minorities as an integral part of the Serbian society. Still, this remains a vague and a rather weak component of the Action Plan as a whole, and of its part III. Whereas some activities are planned for the promotion of minority cultures, and efforts are envisaged further to improve programmes in minority languages, the Action Plan fails to seize the opportunity to create the necessary conditions for minority cultures and traditions to be presented to the society writ large, as its integral part. In that context, the absence of interculturalism is notable.

The situation of the numerically smaller and more recently recognised national minorities is to be addressed in the framework of the new Law on National Councils of National Minorities. However, this law is to be changed (revised or a new law adopted). The newly added strategic goal in this part of the Action Plan recognises the need to improve the level of support to minority language media outside of Vojvodina, but it is questionable if the new activities (3.2. and 3.3.) are sufficient in the meantime to reduce the gaps in the present system of financing minority cultures so as to provide

the more vulnerable, smaller minorities with additional means to be able to preserve their minority culture and identity.

Although promotion of culture and tolerance to raise awareness of the general public on the rights of national minorities and on cultural and linguistic diversity in Serbia is commendable, as well as the newly added Activity 3.12. on the training of journalists, the Action Plan does not explicitly address the issue of *editorial independence*. Also, it is regrettable that the revised Action Plan does not adopt a more pro-active 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 revised Action Plan demonstrates the willingness of the Serbian authorities to improve programmes for the promotion of minority cultures. However, the efforts are rather vague, particularly in terms of presenting minority cultures to the Serbian society as a whole. The revised Action Plan does not provide much details on access of the general public to the media contents in minority languages, although it includes a new activity (3.13.) on a study of costs for such a translation. The authorities are strongly encouraged to include, in such an analysis, also the *benefits* of interculturalism and societal integration.

IV. Freedom of religion

Unfortunately, the revised Action Plan does not address any of the issues as identified by the Advisory Committee, and summarised in the initial Opinion on the Action Plan from 22 December (see attached). The addition in the revised Action Plan “to inform national minority representatives” (IV. Current overview) does not in itself guarantee effective participation of minorities. There is still no guarantee as to how the latter can be achieved (or that it will be achieved).

V. The use of language and script

As stated in the initial Opinion on the Action Plan from 22 December 2015 (see attached), the Action Plan generally follows recommendations of the Advisory Committee in the field of the use of language and script, but 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. The revised Action Plan has envisaged participation of councils for inter-ethnic relations in Activities 5.5. and 5.7. (on the use of minority languages in units of local self-government). This is a welcome addition, but it requires the establishment of such councils (in those units of local self-government where they have not yet been established) and their full functioning thereafter (see further below). Only fully operational and functioning councils for inter-ethnic relations can be expected to contribute to effective participation of (persons belonging to) national minorities in various activities in the field of minority protection.

It is commendable that some participation of national minorities has been envisaged in the process of changing the relevant legislation (Activity 5.6.), but given the differences between national minorities across Serbia, the selection of “a representative of national councils of national minorities” (Activity 5.6.) should not be done in a manner that would either put some national minorities at a disadvantage or create tensions between different national minorities.

Activity 5.4. aims at securing and dispersing additional 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 different budgets. Furthermore, the only figure provided is the one in the budget of the Autonomous Province of Vojvodina, whereas for all other units of local self-government elsewhere in Serbia, the finances remain non-specified. Tenders will be carried out based on the number of applying units of local self-governments, but the criteria for obtaining the funds are not yet specified and no minority participation is envisaged in this process. This lack of clarity in terms of state financial commitment to carry out this activity also outside of Vojvodina may put other national minorities at a further disadvantage in comparison to the minorities, living in Vojvodina.

Two new activities (5.13. and 5.14.) have been added and this is a welcome development as it furthers the use of minority languages in the legislative field and in the judiciary.

VI. Education

As pointed out by the Advisory Committee, the authorities should “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.² It is very unfortunate that the revised Action Plan does not provide a clear commitment by the authorities to provide for such textbooks according to minority needs, and in co-operation with representatives of national minorities. This, together with appropriately trained teachers, is an essential precondition for meeting the needs in the field of education.

This part of the Action Plan specifies numerous and gradual activities, and the newly added or revised ones are welcome additions (e.g. Activity 6.12. and Activities 6.20.–6.22.).

As pointed out in the initial Opinion (see above), continuous and effective participation of national minorities is particularly important, also in the field of education. It is commendable that the revised Action Plan now explicitly mentions participation of councils for inter-ethnic relations with regard to the optimisation of the network of schools (Activity 6.13.). Effective minority participation is needed so as to prevent the occurrence of new obstacles in access to rights of persons belonging to national minorities and in this respect, to effectively participate in the development of new criteria for opening of minority language classes. However, this can be achieved if such councils are appropriately established and they function (see further below).

It is unfortunate that the revised Action Plan has not developed Activity 6.15. and further as recommended in the initial Opinion on the Action Plan from 22 December 2015 (i.e. 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).

VII. Democratic participation

The revised goal of Activity 7.2. directly addresses 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”.³

²Advisory Committee, Third Opinion on Serbia, Recommendation in para. 156.

³Advisory Committee, Third Opinion on Serbia, Recommendation in para. 180.

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

The revised Action Plan now envisages further participation of representatives of national minorities in several activities. This progress is welcome, however, the planned inclusion of national minorities is somewhat vague. When carrying out the Action Plan, minority participation should be secured in an effective manner so that their needs and views are taken into account as explicitly planned in Activity 8.2. Further, minority participation should be secured through functioning representative institutions.

Importantly, effective participation of national minorities in this field needs to be secured in all phases of activities envisaged to achieve the goal, beginning with informing representatives of national minorities about the legislative process, then securing their participation in the public debates and consultation with minority representatives and minority institutions on proposed solutions. Such solutions need to take into account minority needs, and those need to be discussed with minority representatives directly. Furthermore, consultation needs to be organised in an effective manner, with functional bodies. If councils for inter-ethnic relations are effectively not functional (only exist but do not perform their tasks), then other ways of effective consultation with minority representatives need to be sought.

The Action Plan envisages many activities that promise to lead to adequate representation of persons belonging to national minorities in the public sector, but *effective* minority participation is crucial in all stages of those activities.

IX. National councils of national minorities

The revised Action Plan now explicitly mentions minority representatives as participants in the working group that is to work on a new legislative framework for the national councils of national minorities. Effective participation of minority representatives is crucial in this activity. Special attention needs to be paid in this respect to participation of persons belonging to different minorities, including smaller ones, and to representation of diversities within national minorities.

In terms of minority participation in general, it is commendable that in many parts of the revised Action Plan, participation of councils for inter-ethnic relations is now envisaged, which follows the Advisory Committee's promotion of those councils in all units of local self-government with an ethnically mixed population, in addition to the national councils of national minorities as established in Serbia. Importantly, minority participation through councils for inter-ethnic relations, as envisaged in the revised Action Plan, will be beneficial only if those councils are established and if they function.

In general, minority participation needs to be effective, and the authorities should provide for the needed conditions to secure it, be it through national councils of national minorities, councils for inter-ethnic relations and other forms of minority representation. The new legislative framework for national councils of national minorities should address the existing problems with the national councils of national minorities as identified by the Advisory Committee (see also Opinion on the Action Plan of 22 December 2015).

X. Economic status of persons belonging to national minorities

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,⁴ and – 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.⁵ In this context, the revised parts of the Action Plan (Part X.) are a welcome addition that seeks to strengthen investments to and improve employment of persons belonging to national minorities in those less developed parts of Serbia. National councils of national minorities are envisaged as partners in Activities 10.4. and 10.5.

XI. International co-operation

No change was expected in this part of the Action Plan.

The missing issues

The issue of the recognition of diplomas is to be addressed through the EU-facilitated dialogue for the normalisation of relations between Serbia and Kosovo*.⁶

Despite the preparation of the new Roma Inclusion Strategy as a separate document, it is important that Roma issues are mainstreamed into minority protection and in minority policy, 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.

Conclusion

The revised Action Plan has demonstrated the willingness of the authorities to improve the system of minority protection in Serbia, although some issues are yet to be addressed as explained in the present Additional Opinion. The revised parts of the Action Plan are certainly commendable and demonstrate that some progress has been made with regard to the four issues that have been identified in the initial Opinion on the Action Plan of 22 December 2015 as the most important ones requiring further systematic 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. 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.

⁴Advisory Committee, Third Opinion on Serbia, para.203, see also Recommendation in para. 207.

⁵Advisory Committee, Third Opinion on Serbia, para.205, see also Recommendation in para. 208.

⁶Any 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.

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.

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 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.

Although all four issues have been taken into account while revising the Action Plan, there is still room for further improvement. Still, even in the absence of a precisely written provision on minority consultation, for example, the latter can indeed be secured during the implementation phase of the Action Plan. Similarly, minority participation needs to be *effective*. Accordingly, what is crucial now is *how the Action Plan will be implemented*.

The Action Plan, with its comprehensive list of goals and activities, certainly provides *an opportunity* to improve the present state of affairs with regard to access of persons belonging to national minorities to minority rights. In this process, *effective* minority participation is crucial – where explicitly identified in the Action Plan and in other areas where the Action Plan does not mention it explicitly, in all phases of the implementation of the Action Plan.

Importantly, the authorities are encouraged to invest further in achieving integration of the Serbian society as a whole, based on the promotion of national minorities as an integral part of the Serbian society. To reiterate, 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 as a needed context within which persons belonging to national minorities will be able fully to enjoy (access to) minority rights.

Given the significance of the *implementation* of the Action Plan, regular monitoring (through identified indicators) will be crucial, and this needs to be done as widely as possible with effective participation of representatives of national minorities, including numerically smaller ones. Independent monitoring needs to be secured at regular intervals so that identified weaknesses can be addressed effectively and in a timely manner. This includes the need to regularly assess the suitability of the funds available for different activities.