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

### **Second Opinion on Serbia adopted on 19 March 2009**

#### **EXECUTIVE SUMMARY**

Since the adoption of the Advisory Committee's first Opinion in November 2003, the Serbian authorities adopted a new Constitution in 2006 which includes a commendable chapter on national minority protection. A new Criminal Code was adopted with some important provisions in the field of non-discrimination. The State level Ombudsman has started his work, with promising initiatives to be launched in the field of monitoring minority protection in all regions of Serbia. The commitment shown by the recently established Ministry of Human and Minority Rights in pursuing reform is encouraging.

Opportunities for persons belonging to national minorities to learn their languages have been expanded in certain areas of Serbia and some further measures to display traditional names and topographical indications have been taken. The national minority councils established so far have started to play an active role in articulating minorities' interests, despite the legal vacuum regarding their role and activities.

The delay in adopting some pending legislation, including the law on the national minority councils, over the last five years has caused legitimate concerns and, on the whole, the pace of reform in the area of minority protection, has slowed down. The changes introduced to the legislative framework with regard to minority media have been marked by a lack of consistency and as a result, have created confusion.

In the field of education, the optional character of minority language teaching requires further discussion with representatives of national minorities. The problems encountered with regard to the recognition of diplomas from educational institutions from the region still complicate the access to education of certain persons belonging to national minorities.

It is crucial that the future National Strategy on Roma address vigorously the difficulties encountered by the Roma in accessing employment, education, housing and health care and that their lack of personal documentation is tackled as a matter of priority.

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

**SECOND OPINION ON SERBIA**

1. The Advisory Committee adopted the present Opinion on 19 March 2009 in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the State Report (hereinafter the State Report), received on 4 March 2008, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Belgrade, Novi Sad, Bujanovac, Niš and Novi Pazar from 3-7 November 2008.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Serbia. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Serbia, adopted on 27 November 2003, and in the Committee of Ministers' corresponding Resolution, adopted on 17 November 2004.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Serbia.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Serbia as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.

## **I. MAIN FINDINGS**

### **Monitoring process**

6. Serbia has pursued a positive approach to the monitoring process. It agreed to the early publication of the first Opinion of the Advisory Committee and translated it into Serbian. The authorities organised, in October 2005, a follow-up meeting to discuss the results of the first monitoring of the Framework Convention in the presence of the relevant stakeholders.

7. The preparation of the 2<sup>nd</sup> State Report was carried out with the involvement of representatives of national minorities and contains comprehensive information on the legal framework together with some more limited information of the relevant practice. The Advisory Committee appreciates the fact that statistical information has been included, even though some of the data is incomplete. It also welcomes the answers to the more specific questionnaire appended to the outline for the 2<sup>nd</sup> State Report. The Advisory Committee regrets however that the State Report was submitted with a seven month delay.

8. The Advisory Committee notes that the frequent changes in the allocation of responsibilities for minority issues with the governmental structure in recent years has also complicated efforts by national minorities to engage in the monitoring process and the dialogue it entails. The Advisory Committee further notes that there has been some confusion regarding the role of the councils of national minorities in the reporting process and expects that further clarification will be achieved in the future.

9. The Advisory Committee notes that although there have been valuable efforts to raise awareness on the Framework Convention, in particular thanks to the active role played by civil society actors, initiatives taken by the central authorities in this area seem to have slowed down over years.

### **Legislative and institutional framework**

10. In its decision dated 14 June 2006, the Committee of Ministers of the Council of Europe noted that the Republic of Serbia had become a member of the Council of Europe as a continuation of Serbia and Montenegro with effect from 5 June 2006.<sup>1</sup> As a successor State of the State Union of Serbia and Montenegro, Serbia assumed obligations of the then State Union of Serbia and Montenegro and the present Opinion is therefore to be seen in light of this development.

11. The Advisory Committee notes that in connection with the above mentioned developments, Serbia adopted a new Constitution in October 2006 which includes a specific chapter on the protection of national minorities. Although some relevant legislative changes have been introduced since the Advisory Committee's first Opinion, the failure to adopt key legislation to advance the protection of national minorities in Serbia has prompted legitimate concerns. The Advisory Committee refers in particular to the adoption of a comprehensive law on non-discrimination and the law on the national minority councils.

12. At the institutional level, recent years have been characterized by a lack of continuity in the allocation of institutional responsibility for national minorities. Such changes have affected negatively the capacity and effectiveness in developing and implementing a coherent minority

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<sup>1</sup> Decision of the Committee of Ministers adopted at its 967<sup>th</sup> meeting on 14 June 2006.

policy. The replacement in July 2008 of the Agency for Human Rights by a new Ministry of Human and Minority Rights demonstrated a more committed approach to minority protection and gave positive signals to national minorities who for the most part, have felt that too limited attention has been paid to them by central authorities so far. However, Serbian authorities are still largely considered to lack a comprehensive and strategic approach towards the integration of its minorities into the society. In addition, measures taken in this field of minority protection are often perceived by Serbian society as a result of the pressure exercised by external actors. The Advisory Committee finds it essential that issues affecting national minorities are fully incorporated into the general public policy discourse and that further awareness measures are taken.

13. There are considerable discrepancies in the implementation of minority rights between the Province of Vojvodina where regulations and relevant practice relating to minority language use and education are more advanced, than other parts of the country where minorities are living in substantial numbers such as Sandžak (Bosniac minority), South Serbia (Albanian minority) and East Serbia (Bulgarian and Vlach-Romanian minorities). At local level, implementation of minority rights provisions is often reported to vary according to the political circumstances prevailing in the municipality concerned. Such a situation represents a clear obstacle for the consistent implementation of legal provisions and needs to be tackled.

### **Equality and protection against discrimination**

14. Serbia has further developed its institutional and legal framework relating to the protection against discrimination with the adoption of a new Criminal code in 2006 and the appointment of a State level Ombudsman in 2007. However, further improvements are needed in terms of advancing non-discrimination legislation (see paragraph 11 above) and ensuring that the State level Ombudsman is given all the legal and practical means to operate efficiently and in co-operation with provincial and local Ombudsmen.

15. Serbian courts are not sufficiently addressing problems of discrimination as evidenced *inter alia* by the relatively few number of cases referred to them. This can be explained by a limited confidence of persons belonging to national minorities, in particular the Roma, in judicial remedies and it is therefore important that steps are taken to strengthen such confidence.

### **Inter-ethnic relations**

16. While steps have been taken by the Provincial authorities of Vojvodina to promote mutual understanding between all persons living in the Province, support to initiatives of this kind at central level has generally been lacking. The education system reportedly does not sufficiently include inter-cultural elements and shortcomings have been highlighted with regard to media contribution to the promotion of tolerance.

17. Ethnically-motivated offences are not adequately addressed by the police and the courts, as evidenced in the case of recent manifestations of violence against persons belonging to the Albanian and other minorities at the beginning of 2008. This situation is particularly worrying and requires urgent action.

## **Use of minority languages**

18. More consistent implementation of the existing legal framework regarding the use of minority language in relations with local administrative authorities and the display of traditional place names and topographical signs in minority languages is required. There is also a need to further clarify the existing legal regulations governing the right to use of personal names in minority languages and its official recognition and remove any territorial limitations to this right.

## **Education**

19. Although legislation regarding education of minority languages is, generally, well developed in Serbia, further initiatives would be needed to provide increased opportunities to study their language, in particular for the Vlachs living in North East Serbia. Shortcomings are still reported in the area of teacher training and textbooks. The optional character of classes in minority languages is a persistent concern of representatives of national minorities as it may discourage minority pupils to enrol in such classes. Solutions need to be found in this area, in due consultation with national minority representatives.

20. Recognition of diplomas in Serbia is reportedly still subject to lengthy and unnecessary complex procedures. This has caused obstacles for persons belonging to national minorities to access higher education institutions as well as access employment. Steps should be taken to find comprehensive solutions regarding the recognition of diplomas by educational establishments in Kosovo.<sup>2</sup> There is also a need to ensure that the competent Serbian educational authorities are issuing their decisions on the recognition of diplomas of other institutional establishments of the region within a reasonable time-limit.

## **Media**

21. There is a number of positive examples of minority language print and electronic media in Serbia. However, recent changes in the legal framework relating to minority language media, namely the exemption from privatisation of minority language media, has given rise to diverging views. There is a need to ensure that there is no discrepancy between the existing legal provisions relating to minority media and that adequate conditions for the effective exercise of the right of national minorities to create and use their own media are provided.

22. The Serbian authorities are encouraged to consult national minority representatives so as to ensure that the planned switchover to digital broadcasting by 2012 is carried out in a way that opens up new opportunities for persons belonging to national minorities to access media in their language.

23. Specific attention should be paid to the participation of persons belonging to national minorities in media regulatory bodies and management.

## **Participation**

24. The legal gap existing regarding the definition of the role and scope of activities of the national minority councils should be filled rapidly with the adoption of a law on the national

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<sup>2</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

minority councils. It is important that the future law does not contain any undue obstacles regarding the participation of persons belonging to national minorities to these councils and that election procedures fully respect the principle of free self-identification.

25. Shortcomings remain regarding the representation of certain national minorities in law enforcement structures and in the judiciary, in particular for persons belonging to the Bosniac and Albanian minorities. The existing information on the representation of national minorities in public administration is incomplete. It is important that the authorities try to obtain a complete overview on the situation in this field, while paying due attention to international standards in the field of personal data protection.

26. The experience of the councils for inter-ethnic relations which have been established so far at municipal level, highlighted the need to provide some further clarity and guidance with regard to the selection of their members and their functioning.

27. Increased attention is needed to address the economic under-development of areas where persons belonging to national minorities live in substantial numbers. Measures to be pursued in this field should involve representatives of national minorities.

### **Situation of the Roma**

28. Persons belonging to the Roma minority still face discrimination in a number of fields including employment, health and housing. The lack of personal documents of both local and internally displaced persons has still not been tackled in an adequate manner, which has resulted in obstacles to access a number of social rights. More resolute action is needed in the context of the future National Strategy on Roma to tackle these problems.

29. In the area of education, the undue placing of Roma pupils in special schools for persons with mental disabilities is still reported to occur. This needs to be stopped urgently. Undue administrative and other obstacles to the enrolment of Roma pupils to schools needs to be vigorously addressed. Roma teaching assistants need to better integrate into the general education structure. Adequate language support should be in place for Roma pupils displaced from Kosovo and Roma returned from Western European countries, who lack proficiency in Serbian.

30. Although some steps have already been taken, Serbia still lacks a comprehensive strategy for dealing with refugees and internally displaced persons. It is important that adequate steps are taken in that direction in order to find durable solutions to their situation.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Personal scope of application

##### *Findings of the first cycle*

31. In its first Opinion, the Advisory Committee noted that the definition of the term national minority contained in Article 2 of the 2002 Law on the Protection of the Rights and Freedoms of National Minorities<sup>3</sup> (hereinafter: Law on National Minorities) included a large number of groups. At the same time, the Advisory Committee noted that limiting the scope of the term national minorities to citizens may impact negatively on the protection of those persons, in particular the Roma and other persons whose citizenship status had not been confirmed. It therefore called on the authorities to reconsider this issue.

##### *Present situation*

#### a) Positive developments

32. The Advisory Committee notes the positive approach taken by Serbia to implement the provision of the Framework Convention to a large number of groups, including numerically small ones.

33. The Advisory Committee welcomes the fact that the Constitution of Serbia adopted on 30 September 2006 contains a specific Chapter on the Rights of Persons belonging to National Minorities (Articles 75 to 81), which includes general guarantees for persons belonging to national minorities, independently of their citizenship status.

34. The Advisory Committee notes that the authorities are preparing a law on legal personality which aims *inter alia* at regularizing the situation of those persons who are currently lacking personal documents. The Advisory Committee considers that measures to regularise the situation of those whose legal status is unclear is highly important in order to ensure that they are not faced with undue restrictions in the exercise of their human and minority rights.

#### b) Outstanding issues

35. The Advisory Committee regrets that the Serbian authorities have maintained the citizenship requirement in the general definition of national minorities in Article 2 of the Law on National Minorities. As already explained in the context of its first Opinion on the then Serbia and Montenegro, the Advisory Committee finds that such a citizenship requirement can

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<sup>3</sup> Article 2 of the said law reads as follows:

*“Under the terms of this Law, a national minority is a group of citizens of the Federal Republic of Yugoslavia sufficiently representative, although in a minority position on the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory and possessing some distinctive features, such as language, culture, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and whose members should show their concern over preservation of their common identity, including culture, tradition, language or religion.*

*Under the terms of this Law, all groups of citizens who consider or define themselves as peoples, national and ethnic communities, national and ethnic groups, nations and nationalities, and who fulfill the conditions specified in paragraph 1 of this Article, shall be deemed national minorities for the purpose of this Law.”*

only have a negative impact on those persons whose citizenship status, following the break-up of Yugoslavia and the conflict in Kosovo, has not been clarified. This is particularly the case of the Roma who face difficulties in obtaining confirmation of their citizenship, notably due to a lack of personal documents.

36. In this context, the Advisory Committee wishes to recall that in its 2006 Report on Non-Citizens and Minority Rights, the Venice Commission highlighted that “the universal character of human rights, of which minority rights are part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to *specific* (emphasis added) minority rights. Citizenship should therefore not be regarded as an element of the definition of the term “minority” but it is most appropriate for the States to regard it as a condition necessary to certain minority rights”.<sup>4</sup>

#### *Recommendations*

37. The Advisory Committee invites the authorities to pursue a more flexible approach to the use of the citizenship criterion, as already reflected in the relevant provisions of the 2006 Constitution, by removing such a criterion from the general provision on the scope of application of the Law on National Minorities and limiting its use to those provisions for which it is relevant, such as electoral rights at national level.

38. The Advisory Committee calls on the authorities to regularise, as a matter of priority, the situation of those persons belonging to national minorities, especially the Roma, whose legal status remains unclear by swiftly adopting the necessary legal measures and by ensuring their full and effective implementation.

#### **Respect for the specific identity of persons belonging to national minorities**

##### *Findings of the first cycle*

39. Noting the existing debates in Serbia on the inter-relations between different identities, in particular the Vlach and Romanian identities and the Croatian and Bunjevtsi identities, the Advisory Committee encouraged the authorities to exclude all attempts to impose a specific identity on the persons concerned, in conformity with the principle of free self-identification contained in Article 3 of the Framework Convention.

##### *Present situation*

#### a) Positive developments

40. The Advisory Committee welcomes Serbia’s explicit commitment, as expressed in the State Report, not to interfere in the debates over the ethnic affiliation of persons belonging to national minorities.<sup>5</sup> In practice, the authorities enabled both the Romanians and the Vlachs as well as the Croats and the Bunjevtsi to form their own national councils (see also Article 15 below).

<sup>4</sup> See Report of the Venice Commission on Non-citizens and Minority Rights, CDL-AD (2007) 001, paragraph 144, published on 18 January 2007.

<sup>5</sup> See State Report, page 54.

b) Outstanding issues

41. The Advisory Committee finds that there are still debates as to whether the Vlachs and the Romanians on the one hand and the Croats and the Bunyevtsi on the other hand have distinct identities.<sup>6</sup> It further notes, as far as the Vlach and the Romanian identities are concerned, that these controversies are on-going inside and outside Serbia. Irrespective of the context, the Advisory Committee finds it essential that the right of every person belonging to a national minority to choose freely to be treated or not as such, is respected, in line with Article 3 of the Framework Convention.

*Recommendation*

42. The Advisory Committee encourages the Serbian authorities to continue to strictly abide by the principle of free self-identification contained in Article 3 of the Framework Convention.

**Ethnic data protection**

*Findings of the first cycle*

43. The Advisory Committee found that data on ethnicity is collected in various contexts and that it is important that the collection of data on individuals' affiliation with a particular minority is coupled with adequate legal safeguards.

*Present situation*

a) Positive developments

44. Serbia adopted a new Law on the Protection of Personal Data on 23 October 2008 which contains enhanced guarantees regarding the collection and the processing of personal data. The law explicitly provides that sensitive data which includes data on ethnicity, language and religion can only be collected on the basis of the voluntary consent of the person concerned. It also provides for the adoption of specific regulations for the processing of such data.

45. The Advisory Committee also notes that Serbia ratified the additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Processing of Personal Data on 2 July 2008.

46. Preparations for the next population census planned in 2011 have started with the adoption of methodological guidelines for the carrying out of the census. The Advisory Committee notes with satisfaction, based on the information received from the authorities, that this population census will include a non-mandatory question of the ethnic, linguistic and religious affiliation of the persons and that translation of census forms is envisaged into the main languages of persons belonging to national minorities. The Advisory Committee further notes that the Serbian Statistical Office has recently recommended that census committees in multi-ethnic areas will include, as census-takers, persons belonging to those national minorities living in the area concerned. The Advisory Committee finds it important that this recommendation is adequately followed up in view of the issues raised by some minority representatives in connection with the last census (see below).

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<sup>6</sup> See, for example, the Report of the Parliamentary Assembly on the situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia (document 11528) dated 14 February 2008 and the corresponding Resolution 1632 (2008).

## b) Outstanding issues

47. While it is positive that Serbia updated its legislation regarding personal data protection, the Advisory Committee notes that pending the establishment of a specific supervisory mechanism, the Commissioner for Access to Public Information was appointed to the position of Commissioner for the Protection of Personal Data foreseen in the law. The Advisory Committee further notes that this decision was not coupled with the allocation of any additional human resources to his office. The necessary regulations on the processing of personal data, as provided for in the law, have not yet been adopted.

48. The Advisory Committee notes that representatives of the Bunyevtsi complained that they were not involved in the carrying out of the 2002 census.<sup>7</sup> Representatives of this minority also claim that there have been instances of census-takers registering persons belonging to the Bunyevtsi minority as Croats because the persons concerned had declared themselves as such in the previous census.

49. The Advisory Committee finds that the demographic composition of Serbia has been in a state of flux over the last decades and that the ethnic affiliation of persons belonging to national minorities may have been changed over time. In addition, there are great variations between the official figures relating to the number of persons belonging to the Roma minority and figures from other sources. Against this background, the Advisory Committee expects that the next population census planned in 2011 will be adequately used to obtain up-to-date and reliable information on the ethnic composition of the country. In particular, the Advisory Committee considers that it is important that the authorities raise the awareness of the general population about the importance of the census and that they undertake adequate consultations with representatives of national minorities during the preparation of the methodology and forms to be used. Finally, it is important that persons belonging to national minorities, and especially Roma, are included among the census-takers in order to increase the trust of national minorities in the census process.

*Recommendations*

50. The Advisory Committee calls on the Serbian authorities to take the necessary measures to implement fully the existing domestic legal guarantees regarding the collection and the processing of personal data. This includes the setting up of a specific supervisory body on personal data protection which should be independent and enjoy adequate resources both in terms of budget and human resources, to fulfil its tasks efficiently.

51. The Advisory Committee encourages Serbia to ensure that the forthcoming population census is carried out in a manner that duly respects the right to free self-identification as set out in Article 3 of the Framework Convention. The competent authorities should also ensure that representatives of national minorities are adequately involved at all stages of the population census.

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<sup>7</sup> The last population census was organised in 2002 with the following results published by the Statistical Office of the Republic of Serbia: Serbs 6,212,838 (82.86 % of the total), Montenegrins 69,049 (0.92%), Yugoslavs 80,721 (1.08%), Albanians 61,647 (0.82%), Bosniacs 136,087 (1.82%), Bulgarians 20,497 (0.27%) , Bunyevtsi 20,012 (0.27%), Vlachs 40,054 (0.53%), Gorani 4,581 (0.06%), Hungarians 293,299 (3.91%), Macedonians 25,847 (0.35%), Moslems 19,503 (0.26%), Germans 3,901 (0.05%), Roma 108,193 (1.44%), Romanians 34,576 (0.46%), Russians 2,588 (0.03%), Ruthenians 15,905 (0.21%), Slovaks 59,021 (0.79%), Slovenes 5,104 (0.07%), Ukrainians 5,354 (0.07%), Croats 70,602 (0.94%), Czechs 2,211 (0.03%), others 11,711 (0.16%); Did not declare themselves 107,732 (1.44%), Regional affiliation 11,485 (0.15%), unknown 75,483 (1.01%).

## Article 4 of the Framework Convention

### Legislative framework for prohibiting discrimination

#### *Findings of the first cycle*

52. The Advisory Committee found that the existing civil and criminal law provisions against discrimination would need to be developed further and that any undue citizenship requirement should be removed. The Advisory Committee called on the authorities to complete the work that they have initiated on a comprehensive law on non-discrimination.

#### *Present situation*

##### a) Positive developments

53. The Advisory Committee welcomes the fact that the 2006 Serbian Constitution contains important guarantees against discrimination (see Articles 21 and 76).

54. The Advisory Committee notes that a new law on non-discrimination is expected to be adopted in the near future. It expects that its content together with its practical implementation, will be fully in line with the recommendations made by the Venice Commission on a previous draft text.<sup>8</sup> In particular, the Advisory Committee expects that the guarantees for the independence of the envisaged Commission for the Protection of Equality are in place and that it will be given all the necessary support to function effectively in practice.

55. Serbia adopted a new Criminal Code in 2006. It contains some valuable provisions against discrimination, including the prohibition of discrimination on, amongst other grounds, national or ethnic origin (Article 387), the prohibition of the violation of a citizen's right to use his or her mother tongue or alphabet (Article 129), the prohibition of the instigation of national, racial and religious hatred and intolerance (Article 317).

##### b) Outstanding issues

56. Although the law on non-discrimination is expected to be adopted in the near future, the Advisory Committee notes the delay in adopting such key legislation for the protection of persons belonging to national minorities.

57. The Advisory Committee notes that its recommendation to eliminate any undue citizenship criterion from all pertinent legislation in the field of national minority protection has not been fully addressed. It notes, for example, that certain provisions of the Criminal Code still refer to citizens (and not to "persons") in areas of relevance for the protection of national minorities.<sup>9</sup>

58. Furthermore, the Advisory Committee finds it problematic that the Serbian Constitution restricts to "citizens" the right to address international human rights institutions in order to protect the freedoms and rights guaranteed by Article 22 of the Constitution. Given the prevailing situation in Serbia regarding issues of citizenship (see Article 3 above), such a provision results in the exclusion of those non-citizens who form part of a minority group from accessing international human rights institutions.

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<sup>8</sup> See Opinion N°453/2007 on the Draft Law on Prohibiting Discrimination of the Republic of Serbia adopted by the Venice Commission on 22 January 2008 (CDL-AD(2008)001).

<sup>9</sup> See for example, Article 129 of the Criminal Code which prohibits the violation of *citizens'* right to use their mother tongue or alphabet in their relations with the public authorities.

*Recommendations*

59. The Advisory Committee invites the authorities to ensure that the law on non-discrimination is adopted without delay and that its implementation duly takes into account ECRI's General Policy Recommendation N°7 on National Legislation to Combat Racism and Racial Discrimination.

60. The Advisory Committee calls on the authorities to ensure that any undue citizenship requirement is eliminated from legislation relevant to the protection of national minorities, including criminal legislation.

**Positive measures<sup>10</sup>***Findings of the first cycle*

61. Given the importance of positive measures, in particular for persons belonging to national minorities who were targets of discrimination in the past, the Advisory Committee found that such positive measures should be further developed in their respect.

*Present situation*

## a) Positive developments

62. The Advisory Committee welcomes the fact that the Constitutional Court confirmed, in 2003, that measures taken at local level to ensure an appropriate participation of persons belonging to national minorities in local administration are not incompatible with Article 21 of the Law on National Minorities<sup>11</sup> and Article 35 paragraph 2 of the Constitution on equal access to jobs and functions.<sup>12</sup> The judgment in question concerns a decision by the municipality of Stara Pazova to give priority to candidates belonging to a national minority meeting the job requirements until an adequate proportion of employees belonging to a national minority in the municipal administration concerned is reached. The Advisory Committee considers that this decision is all the more welcome given that there remains scope for improving the situation of persons belonging to national minorities in terms of equality and participation in all sectors of public life (see also Article 15 below).

## b) Outstanding issues

63. The Advisory Committee notes that Article 76 of the 2006 Constitution provides for the introduction of "specific regulations and provisional measures (...) for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority". However, it finds it problematic that the adoption of such measures may be considered as discriminatory if they are taken for purposes other than eliminating "extremely unfavourable living conditions". Such a provision reflects a restrictive approach to the concept of positive

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<sup>10</sup> The Advisory Committee notes that there is a difference in the terminology in this regard, both at international level and in the practice of the State parties. Article 4, paragraph 2 of the Framework Convention refers to "adequate measures", and paragraph 39 of the explanatory report mentions "special measures". The Opinions of the Advisory Committee have been trying to follow the different terminology used in the various State parties. In order to unify the language of its opinions and to embrace all different terms used to refer to these measures, the Advisory Committee will in future use the term "positive measures", unless explicit reference is made to Article 4, paragraph 2 of the Framework Convention, in which case reference is made to "adequate measures" in accordance with the terminology used in that provision.

<sup>11</sup> Article 21 of the Law on National Minorities provides that "In respect of employment in public services, including the police, attention shall be paid to the national composition of the population, appropriate representation and competence in the language spoken in the territory of the relevant body and service."

<sup>12</sup> See page 68 of the State Report.

measures which is not compatible with the principles resulting from Article 4 paragraph 2 of the Framework Convention. The Advisory Committee is aware that positive measures may give rise to a number of concerns and that they may be perceived as contrary to the principle of non-discrimination. The Advisory Committee recalls however that Article 4 paragraph 2 of the Framework Convention explicitly provides for the adoption of “adequate measures” and foresees that such measures shall not be considered to be an act of discrimination. Indeed, such measures are meant to address a situation of inequality between persons belonging to a national minority and those belonging to the majority, taking into account the circumstances of persons belonging to national minorities. The Advisory Committee would like to emphasize, as stated in the Explanatory Report of the Framework Convention, that such measures need to be proportional and adequate i.e. that they should not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

*Recommendation*

64. The Advisory Committee calls on the Serbian authorities to ensure that the legal provisions relating to the introduction of positive measures are fully in line with the principles contained in Article 4 paragraph 2 of the Framework Convention.

**Monitoring discrimination and available remedies**

*Findings of the first cycle*

65. In its first Opinion, the Advisory Committee urged the authorities to consider the setting up of specific structures to combat ethnic discrimination and considered that this issue should be included as a main element of the future work of the offices of the State and Provincial Ombudsman which were to be established.

66. The Advisory Committee regretted that no detailed statistics were available on the implementation of civil or criminal law provisions on ethnic discrimination and asked the authorities to step up its monitoring in this field.

67. The Advisory Committee also emphasized that the shortcomings in the effectiveness and independence of the judiciary in Serbia, should be addressed as a matter of priority, in so far as they affect negatively the implementation of the Framework Convention.

*Present situation*

a) Positive developments

68. The Law on the Protector of Citizens (hereinafter referred to as “Ombudsman”) was adopted in 2005. The Ombudsman was appointed in June 2007 and one of his four Deputies is responsible in particular for the protection of national minorities. During its visit, the Advisory Committee was pleased to note that one of the main priorities of the Ombudsman is to achieve a more unified system of minority protection in Serbia and welcomed the fact that this had already been consolidated by the adoption of some valuable initiatives to monitor the implementation of minority rights at local level. The Advisory Committee also welcomes the plan of the Ombudsman to set up an office in South Serbia, a region in which there is no such institution at present.

69. Besides the State level Ombudsman, the Ombudsman of Vojvodina was appointed in 2004 in accordance with the 2002 decision of the Assembly of the Autonomous Province and a number of municipalities, including the city of Belgrade, have their own ombudsmen, in accordance with the 2004 Law on Local Self-Government. The Advisory Committee finds that,

provided that it is further expanded to all municipalities and that adequate coordination is ensured, the future network of Ombudsmen has a potentially important role to play in contributing to the implementation and monitoring of the Framework Convention in Serbia.

b) Outstanding issues

70. The Advisory Committee notes the delay in appointing the State level Ombudsman and that more than a year after his nomination, he has still not been able to move to the building he was allocated and that instead his office has been hosted in various premises, including, more recently, in governmental premises. Such a situation is undermining the importance attached to the role and the independence of the Ombudsman together with his accessibility for persons belonging to national minorities.

71. The Advisory Committee notes that it is acknowledged that discrimination often goes unreported in Serbia. The Provincial Ombudsman of Vojvodina explained, for example, that his office received very few complaints from persons belonging to the Roma minority, despite the fact that cases of discrimination against persons belonging to this minority are regularly reported by civil society. This is even more so in the judiciary, which has not yet sufficiently addressed problems of discrimination, although some cases - albeit too limited - have been taken up regarding the instigation of racial hatred (see Article 6 below). Such a situation, which may be explained by the lack of confidence and awareness of the persons concerned in the existing human rights protection institutions, should be addressed urgently.

*Recommendations*

72. The Advisory Committee finds it essential that the State level Ombudsman's future work in the field of minority rights receives adequate support. The Serbian authorities should take the necessary measures to ensure that the ombudsmen institutions at all levels are in a position to perform their tasks efficiently and that they are known and accessible, in particular to persons belonging to national minorities, including in their language.

73. The Advisory Committee calls on the authorities to take measures to increase, among the population, awareness of their rights as well as strengthen the confidence in the judiciary among persons belonging to national minorities to address cases of alleged discrimination to the Courts.

**The situation of the Roma**

*Findings of the first cycle*

74. The Advisory Committee found that the situation of Roma in fields such as housing, education and employment remained extremely difficult and that, in some settlements, their housing and health situation was alarming which was not compatible with Article 4 of the Framework Convention. It invited the authorities to address the legal status of informal Roma settlements, as well as to support initiatives to improve the access of Roma to personal documents. It considered that a strategy for the integration of Roma needed to be adopted as a matter of urgency.

*Present situation*

a) Positive developments

75. The Advisory Committee acknowledges the efforts made by the Serbian authorities to address the extremely difficult situation in which Roma find themselves. In 2005, Serbia joined

the Decade of Roma Integration (2005-2015) and instead of a National Strategy on Roma, it adopted four national action plans in the field of employment, housing, education and health. Furthermore, a comprehensive strategy on Roma (hereinafter referred to as “National Strategy on Roma”) is to be adopted soon. A Roma National Strategy Secretariat has been set up within the then Office and now Ministry of Human and Minority Rights. Persons belonging to the Roma minority have been included in this structure, which is a positive signal. At the level of the Province of Vojvodina, an Office for Roma Inclusion was established in 2005. The Serbian Government has committed itself to increase the financial allocation to measures targeting the Roma population.<sup>13</sup>

76. Some valuable initiatives have been taken within the above-mentioned institutional and policy framework. The Advisory Committee notes, in particular, the specific measures taken by the National Employment Office to attract Roma to self-employment projects. At the level of Vojvodina, the contribution of the Office for Roma Inclusion in facilitating employment of Roma has been positively assessed by Roma representatives.

77. The Advisory Committee welcomes the fact that the Serbian authorities acknowledged the need to address the situation of Roma who lack personal documentation. A law on legal personality is being prepared in order to regularise their situation, which is a positive first step. (see also Article 3 above).

78. Guidelines for the Upgrading and the Legalisation of Roma Settlements have been adopted as an initial measure aimed at addressing the housing situation of the Roma. Regularisation of property status of housing in some Roma settlements should now have begun in those municipalities which have adopted decisions on legalisation and signed agreements with construction agencies.<sup>14</sup> The authorities have taken steps to put an end to the unacceptable living conditions of the Gazela Roma settlement in Belgrade<sup>15</sup> and a relocation plan has been adopted even though the process leading to its adoption has triggered criticism and difficulties (see also Article 6 below).

79. The Ministry of Health has been praised to be one of the few ministries to have earmarked funds from its own budget to finance the implementation of the Roma Health Care Plan from 2006 till 2008. The Advisory Committee welcomes its pro-active co-operation with civil society organisations and local authorities.

#### b) Outstanding issues

80. The commitment of the Serbian authorities to improve the socio-economic situation of the Roma has not yet led to substantial changes in practice. The gap separating the Roma from the rest of the population persists and so do the serious difficulties which many of them continue to face. The National Action Plans have regularly lacked resources and with some exceptions (see paragraph 79 above), no funds were clearly earmarked from the State budget for their implementation. As a consequence, they have, for the most part, relied on international donors. This has caused difficulties for the continuity of the measures taken and can demonstrate a lack of ownership and commitment.

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<sup>13</sup> See the Report of the Council of Europe Commissioner for Human Rights on Serbia published in March 2009 according to which Serbia will allocate over 1 billion dinars to the improvement of the situation of the Roma (CommDH (2009)8, page 31).

<sup>14</sup> See 2007 Yearly Report of the League for the Roma Decade, Minority Rights Centre, January 2008.

<sup>15</sup> The Gazela settlement is a settlement of approximately 2 000 Roma, some living in cardboard shelters, under one of Belgrade’s main bridges, with no water supply or electricity.

81. Coordination between various ministries has proved difficult in the absence of clearly established structures, and calls for the institutionalisation of the implementation and monitoring of the Roma Strategy, have repeatedly been made by Roma representatives, NGOs as well as international actors. In the meantime, the evaluation of the progress made has mainly rested on the non-governmental sector, notably with the League for the Roma Decade, a coordinating body of Roma NGOs.

82. The National Action Plans do not oblige the local government to adopt their own plans taking into account local circumstances and to earmark funding for measures aimed at improving the situation of the Roma. While some municipalities have taken initiatives to adopt their own plan, the general lack of commitment of local authorities has been identified as a particular weakness for the implementation of the Roma Decade Action Plan.

83. The Advisory Committee is deeply concerned about the situation of the many Roma who still lack personal documents. This concerns local Roma and internally displaced Roma, Ashkali and Egyptians from Kosovo, who many years after their displacement, find themselves without the basic documentation needed to access a number of social rights (see also Article 15 below). The Advisory Committee is aware that some valuable initiatives have been taken by some local NGOs with the support of the international community, such as the provision of free legal aid. However, it regrets the fact that no decisive measures have been taken so far by the Serbian authorities to tackle effectively this situation. As a result, it is estimated that 30% of the approximately 206 000 internally displaced persons (IDPs)<sup>16</sup> recorded in Serbia are still without personal documents. Procedures for obtaining personal documents remain lengthy, unnecessarily bureaucratic and they place an unreasonable burden on IDPs to acquire documentation.<sup>17</sup> In addition, it has been reported that IDPs often lack adequate information about their rights and that the registry offices have failed to devote sufficient attention to this.

84. The Roma Gazela settlement which has been the subject of recent attention by the authorities (see also above) is one of the many examples of illegal settlements existing in Serbia. Although nation-wide data on the housing situation of the Roma is not available, some studies have indicated that out of the 593 existing Roma settlements in Serbia, 72% have not been legalised.<sup>18</sup> Many of the Roma, Ashkali and Egyptian IDPs who do not have access to collective accommodation, live in those informal settlements, sharing the same precarious situation as the local Roma population. In addition, the Advisory Committee was informed that Roma are still faced with forced eviction without being offered any alternative accommodation.

85. The Advisory Committee is deeply concerned by the fact that in many regards, the hygienic and sanitary conditions in many of these settlements have not improved since its first Opinion in 2003. Roma organisations, including Romani women organisations, describe the health situation of Roma, in particular Roma women, children and elderly as particularly alarming<sup>19</sup> and highlight the difficulty to access health care in the absence of the necessary medical registration. The Advisory Committee finds that such a situation is not compatible with

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<sup>16</sup> According to information provided by UNHCR in its Briefing paper dated October 2008, out of the total number of IDPs, over 75% are Serbs followed by Roma and some other ethnic groups.

<sup>17</sup> Roma often have to travel to the registry offices which were dislocated from Kosovo by the Serbian authorities in 1999, to a number of registry offices in Central and South Serbia.

<sup>18</sup> See, 2007 Country Report, Serbia in *First Decade Watch Report, Roma activists assess the Progress of the Decade of Roma Inclusion*, June 2007, see [www.romadecade.org](http://www.romadecade.org).

<sup>19</sup> See, in particular, Written Comments of the European Roma Rights Center, Bibija, Eureka and Women's Space submitted to the 38th CEDAW session, May 2007. See also for further data, the State of Children in Serbia 2006 with Focus on Poor and Excluded Children, UNICEF, Belgrade.

Article 4 of the Framework Convention. Against this background, the Advisory Committee regrets the fact that the National Action Plan on Health, which provided for the introduction of a system of health mediators, has been implemented too slowly to address adequately the urgency of the situation.<sup>20</sup>

### *Recommendations*

86. While building on the experience so far, Serbia should ensure that the National Strategy on Roma to be adopted is provided with sustainable coordination and implementing structures, as well as adequate human and financial resources. The authorities should secure the full involvement of local authorities in its implementation as well as provide for regular evaluations, in consultation with Roma representatives, of the progress achieved at national, provincial and local levels, by setting clear targets and collecting reliable data.

87. The Serbian authorities should pursue the implementation of their measures regarding the legalisation of Roma settlements and ensure that they are coupled with adequate financial means and with the increased involvement of the local authorities. Serbia should ensure that legal guarantees are in place to provide those persons concerned by an eviction order, with prior information, adequate alternative accommodation as well as the possibility to appeal the decision.

88. The Advisory Committee urges the Serbian authorities to redouble efforts to address the particularly critical health situation of many Roma, especially women, children and the elderly. The appointment of additional health mediators should be pursued as a matter of urgency.

## **Article 5 of the Framework Convention**

### **Policy of support for minority cultures**

#### *Findings of the first cycle*

89. The Advisory Committee found that State support for the protection and promotion of national minority culture is often provided on an *ad hoc* basis and that there are substantial differences in the commitment of the competent authorities to initiatives in this field. It considered that the needs of groups that have been defined as national minorities only recently after the break-up of Yugoslavia such as the Croats and the Macedonians, should be carefully taken into consideration. It called on the authorities to swiftly make operational the Fund for the Promotion of Social, Economic and Cultural and General Development of National Minorities (hereinafter State Fund for the National Minorities), foreseen in the Law on National Minorities.

#### *Present situation*

##### a) Positive developments

90. The Advisory Committee notes that national councils of minorities have played a positive role in obtaining financial support from central and local authorities for cultural initiatives of their respective minorities. The Advisory Committee notes in particular that the support and co-operation of the Provincial authorities of Vojvodina have generally been assessed positively by minority representatives. Cultural associations of groups which were only recently defined as national minorities, such as the Croats and the Macedonians, reported improvements in the conditions for the preservation and development of their culture.

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<sup>20</sup> Health mediators have been appointed in 15 municipalities so far.

## b) Outstanding issues

91. Stable funding distributed according to a systematic procedure and with the consultation of national minorities is still lacking in Serbia. Although foreseen in the Law on National Minorities, the State Fund for the National Minorities has still not been made operational, creating a growing frustration among national minorities. Pending the establishment of this Fund, projects often receive *ad hoc* support or are funded on the basis of public tenders. Such a situation is unsatisfactory.

92. In the absence of the aforementioned Fund, the level of support to the culture of national minorities is still considered insufficient by a number of national minorities to meet efficiently their needs in this area. In particular, some national minorities have been in a less favourable position in attracting the necessary funding for their cultural activities. Indeed, discrepancies in this area remain high between minorities living in Vojvodina where a higher level of support is reported, and minorities living in other parts of Serbia such as the Vlachs in East Serbia or the Albanians in South Serbia. Roma organisations also pointed out that the modest public funding allocated to their activities makes them *de facto* reliant on international donors to ensure continuity.

93. The Advisory Committee notes that while the Bosniac national council has been active in submitting cultural projects for funding, other cultural institutions and associations of the Bosniac minority have not been made sufficiently aware of such opportunities. Such a situation has generated dissatisfaction among some persons belonging to the Bosniac minority who have also complained about a lack of transparency in the selection of the cultural projects which require funding. Against this background, the Advisory Committee considers that it is important that the national minority councils are not the only actors which have access to the funds available and that sufficient information on funding opportunities is disseminated among other cultural institutions and associations of national minorities.

### *Recommendations*

94. The Advisory Committee urges Serbia to make the State Fund for the National Minorities, foreseen in the Law on National Minorities, operative with no further delay and ensure that both its composition and functioning adequately involve national minorities.

95. The Serbian authorities should ensure that the existing funds for the preservation, promotion and development of minorities' culture are accessible to relevant actors other than the councils of national minorities, in particular NGOs and associations of national minorities.

## **Article 6 of the Framework Convention**

### **Inter-ethnic relations. Role of law-enforcement bodies.**

#### *Findings of the first cycle*

96. The Advisory Committee found that inter-ethnic relations were still seriously affected by the legacy of the past regime and that disconcerting cases of hostility were reported. The Advisory Committee called for increased commitment and initiatives to the promotion of tolerance by the authorities both at local and central levels, including through the councils for inter-ethnic relations and the State level Council of National Minorities.

97. The Advisory Committee invited the authorities to ensure that discrimination based on ethnic grounds faced by persons belonging to national minorities be effectively addressed by law enforcement bodies. It considered that initiatives such as the introduction of a multi-ethnic police force in South Serbia, should be expanded to other regions.

98. The Advisory Committee found that the State level Council of National Minorities envisaged in the 2002 Law on National Minorities could serve as a useful forum to develop initiatives aimed at promoting a spirit of tolerance and inter-cultural dialogue in line with Article 6 of the Framework Convention and urged the authorities to set up this body as a matter of priority.

*Present situation*

a) Positive developments

99. The Advisory Committee notes that there have been positive instances of State authorities condemning vigorously attacks and violence against persons belonging to national minorities that took place in 2004-2005 in Vojvodina and more recently after Kosovo's declaration of independence in 2008. The Advisory Committee also welcomes the public statements made by the Ombudsmen of Serbia and of the Province of Vojvodina in this context.

100. The Advisory Committee notes the constructive role played by the Executive Secretariat of the Province of Vojvodina in launching initiatives for the promotion of tolerance and inter-ethnic dialogue. This includes the project "*Etno Dan*" (Ethno Day), a campaign aimed at building inter-ethnic confidence among children in elementary schools which started in some pilot schools in 2006 and has now been expanded to additional schools of Vojvodina.

101. Progress has been made regarding the issue of addressing war crimes, with some significant recent improvements in the co-operation with the International Tribunal for the former Yugoslavia. The Advisory Committee finds that these are encouraging steps to building trust and reconciliation.

102. The Advisory Committee was informed that a specific module of community policing was introduced as part of the police training in order for the police to better handle relations with minority groups and build trust, which is a positive development. The role of the multi-ethnic police force in South Serbia has generally been positively assessed.

b) Outstanding issues

103. The legacy of the past regime and the violent conflict in the region continue to influence the way in which certain minorities, especially Croats, Bosniacs and Albanians are perceived within the Serbian society. The valuable and innovative media campaign "Tolerance" launched in 2001 throughout Serbia was regrettably a one-off action of the authorities to encourage respect for the ethnic diversity of Serbian society, and with the exception of Vojvodina, central authorities did not demonstrate a continuous commitment to actions that would promote inter-ethnic confidence. The Advisory Committee regrets the fact that the State level Council for National Minorities envisaged in the 2002 Law on National Minorities<sup>21</sup> has only rarely met and has therefore not developed into a forum where national minorities could discuss issues of common concern as well as propose initiatives for dialogue and inter-ethnic tolerance.

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<sup>21</sup> This Council is composed of ministers responsible for areas of importance for national minority protection as well as chairpersons of the national councils of national minorities. It is chaired by the Prime Minister.

104. The Advisory Committee notes also that, while the Serbian educational system achieved valuable results regarding the provision of minority language education (see Article 14 below), it has failed so far to develop an inter-cultural component whereby pupils from the majority population would be able to learn the language of national minorities (see also Article 12 below), as well as about their culture, history, and religion.

105. The series of inter-ethnic incidents that took place in Vojvodina in 2004 have evidenced the potentially unstable inter-ethnic situation in the region. The inadequacy of the Serbian authorities' reaction to these events was widely reported. In particular, the lack and/or delayed reaction of the political leadership, the lack of adequate response by the prosecution and the failure of the police to offer sufficient protection to the victims was widely reported.

106. Against this background, the Advisory Committee finds particularly disconcerting the manifestations of violence against ethnic Albanians and some other minorities that occurred in the whole of Serbia, and particularly in the Province of Vojvodina after Kosovo's declaration of independence in February 2008,<sup>22</sup> have demonstrated the Serbian authorities' inability to respond vigorously and unequivocally to violence against persons belonging to national minorities. In particular, the Advisory Committee received information according to which the investigations by the police and the prosecution of perpetrators of the February 2008 attacks have been particularly inefficient, with cases generally classified as misdemeanours rather than ethnically-motivated crimes. The Advisory Committee notes that this situation may be partly explained by the fact that the Criminal Code of Serbia does not explicitly enable the racist motive of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

107. In addition, although such violence against selected minorities could have been anticipated, no preventive measures have been taken by the police to protect the persons concerned from attacks. In view of the foregoing, the Advisory Committee finds that this situation is not in line with the obligations resulting from Article 6 of the Framework Convention.

108. The positive achievements of the multi-ethnic police force in South Serbia have remained largely limited to this region. While some efforts have been made by the Ministry of the Interior to attract persons belonging to national minorities into the police force,<sup>23</sup> they proved insufficient to increase substantially the ethnic diversity in the police force of Serbia.<sup>24</sup> In particular, Bosniac representatives from the Sandžak area, where Bosniacs live in substantial numbers, have informed the Advisory Committee that there has not been progress regarding their participation in the police forces operating in this area.

109. A complaint procedure against police abuse was introduced as part of an internal police monitoring mechanism. However, instances of misconduct of police officers, including their excessive use of force, are still frequently reported with allegedly no adequate sanctions taken.

110. In South Serbia and Sandžak, while no inter-ethnic incidents have been reported, there is still progress to be made towards the consolidation of a climate of inter-ethnic tolerance and understanding.

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<sup>22</sup> These acts of violence registered in February 2008 have mostly targeted Albanian properties (in contrast to the 2004/2005 attacks which have involved physical violence). It has been widely acknowledged that such acts are not representative of the attitude of the majority of the people in Serbia.

<sup>23</sup> The Ministry of the Interior, for example, published leaflets on the role of the police, in minority languages.

<sup>24</sup> National minorities continue to be under-represented in the police.

111. The Advisory Committee is concerned about the fact that the resettlement of the Roma living under the Gazela Bridge in Belgrade, to an area where persons belonging to the Romanian minority live in substantial numbers has reportedly not been preceded by consultation with the local inhabitants concerned. The Advisory Committee notes that as a result, this resettlement has raised considerable resistance by the inhabitants of the area concerned, who have claimed, in the absence of information and consultation, that this resettlement was aimed at altering the ethnic composition of the area where they live in substantial numbers.

#### *Recommendations*

112. The Serbian authorities should devote particular attention to measures aimed at developing contacts and interactions between the various communities living in Serbia. This would require taking nation-wide awareness-raising measures to promote Serbia's ethnic diversity. The Serbian authorities should also take measures to enhance mutual respect and understanding for each other's culture in the school context, including by promoting the teaching of minority languages to the majority. Specific efforts should be made in Sandžak and South Serbia to encourage interaction between the communities concerned.

113. The Serbian authorities should ensure that the measures taken to relocate Roma living in informal settlements to other areas are carried out in a manner that promotes transparency and consultation with the inhabitants of the areas concerned by the relocation, and the Roma population to be resettled.

114. The Advisory Committee urges Serbia to ensure that its criminal justice system adequately addresses hate crimes by preventing, thoroughly investigating and prosecuting acts of violence targeting persons belonging to national minorities. The Advisory Committee recommends that Serbian criminal law explicitly provide that the racist motivation of an offence constitutes an aggravating factor.

115. The Serbian authorities should increase their efforts to train both the members of the police and the judiciary on discrimination issues and tolerance. They should also ensure that these bodies adequately reflect the ethnic diversity of the population in the region where they operate. At the same time, an effective and independent supervisory mechanism should be in place to monitor police conduct, and established cases of misdemeanour and human rights abuse by the police should be adequately sanctioned.

#### **Media**

##### *Findings of the first cycle*

116. The Advisory Committee found that some media reported in a manner that strengthened existing negative stereotypes against certain minorities and considered that increased attention should be paid to initiatives promoting a balanced and objective reporting on minority issues.

##### *Present situation*

###### a) Positive developments

117. The Advisory Committee welcomes the fact that the Independent Association of Journalists of Serbia adopted a code of ethics which bans stereotyped information on minorities and limits the disclosure of the ethnic origin of a person to duly defined circumstances. It also notes that trainings have been organised by NGOs with the assistance of international organisations on issues of non-discrimination and reporting on cultural diversity.

118. An Agreement of Co-operation in Producing and Broadcasting Programmes pertaining to national minorities was signed in 2007 between the then Office of Human and Minority Rights and the national councils in order to produce programmes of information on national minorities.<sup>25</sup> This is a positive first step in making information on national minorities available to the general public.

b) Outstanding issues

119. The Advisory Committee regrets that although there have been instances of independent media reporting on the 2004/2005 and 2008 inter-ethnic incidents (see above), the public media has, for the most part, not covered these attacks.

120. The Advisory Committee regrets the fact that the portrayal of certain minorities, such as the Bosniac minority, is still associated with negative events in the Serbian mainstream media. The Advisory Committee notes with concern that the ethnic identity of suspects is reportedly often disclosed when they are of Roma origin.

121. The Advisory Committee notes that instances of hate speech occur frequently. Non-governmental organisations highlighted that the current criminal legislation does not include a specific provision on hate speech and that the wording of the existing provisions makes it difficult to prosecute such acts.

122. The Republican Broadcasting Agency (RBA) has among its main tasks the prevention of information that could be discriminatory as well to monitor the work of broadcasters in this respect. The Advisory Committee notes however that representatives of national minorities complained that there is currently no representative of national minorities among the members of the Republican Broadcasting Agency Council<sup>26</sup> which, in their view, does not allow for an adequate reflection on the concerns of national minorities in its work. The Advisory Committee finds it essential that the composition of the RBA Council provides for an adequate representation of national minorities. It considers that consultation with the national councils of national minorities should be carried out on this matter and expects that this will be adequately addressed in the future law on national minority councils (see also Article 15 below).

123. The Advisory Committee notes that recent research carried out in Vojvodina under a joint project of the Novi Sad School of Journalism and the Vojvodina Executive Council<sup>27</sup> shows that prime-time news in both Serbian and minority languages lacked elements that stimulate the spirit of tolerance and inter-cultural dialogue. The lack of multicultural elements is reported to be even more acute in the programmes broadcasted at the level of the Republic.

*Recommendations*

124. Whilst fully respecting the editorial independence of the media, the Serbian authorities should identify measures to encourage national and provincial media outlets to develop programmes aimed at promoting tolerance and inter-cultural understanding.

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<sup>25</sup> See State Report, page 140.

<sup>26</sup> The RBA Council is composed of nine members appointed by the Parliament of Serbia upon the proposals of the competent committees of the Assembly, the Autonomous Assembly of the Province of Vojvodina, the University conference, the association of public media outlets and association of journalists, NGOs including those focusing on the protection of national minorities, traditional churches and religious communities.

<sup>27</sup> This research was carried out under the project "Transformation of Radio and Television Novi Sad into the public service of Vojvodina" (September 2006-January 2007).

125. The Serbian authorities should ensure that cases of hate speech are adequately investigated and prosecuted so as to prevent such acts in the future. Consideration should be given to the introduction of a specific provision on hate speech in Serbian criminal legislation.

126. Greater attention should be paid to vocational training of journalists and other media professionals in order to improve media reporting on minority issues. The monitoring work of the RBA Council should be strengthened and its composition should include an adequate representation of national minorities.

### **Displaced persons**

#### *Present situation*

127. The Advisory Committee recalls that the personal scope of application of Article 6 of the Framework Convention is wide, and that it includes all persons living in the territory and covers therefore non-citizens, asylum seekers and refugees. The Advisory Committee notes that according to the information provided by UNHCR, there are approximately 97 000 refugees (from Croatia and Bosnia and Herzegovina) and approximately 206 000 IDPs from Kosovo living in Serbia. The Advisory Committee further notes that Serbia signed the Re-admission Agreement with the European Union in September 2007 and that its entry into force in January 2008 has prompted new challenges in terms of integrating returnees from Western European countries (see under Article 12, the issue of access of returnees to schools).

128. The Advisory Committee notes that the Serbian authorities have already taken some commendable steps to address the situation of IDPs and refugees. They adopted a new Law on Asylum in November 2007 and according to the information provided by UNHCR, there are encouraging signs regarding its implementation. However a number of concerns remain with regard to IDPs and refugees. These relate to the fact that there is no comprehensive and coordinated strategy to deal with their problems. In particular, in the absence of an adequate legislative and institutional framework, a number of IDPs are still without identity documents and therefore lack access to fundamental social rights (see also Article 4 above). This has led to their further marginalisation from the Serbian society, a situation which affects negatively the implementation of Article 6 of the Framework Convention.

#### *Recommendation*

129. The Advisory Committee calls on the Serbian authorities to adopt a comprehensive strategy for dealing with refugees and internally displaced persons, with clear annual targets and effective monitoring arrangements and ensure that adequate means, both in terms of budget and human resources, are allocated to its implementation. Such a strategy should aim at finding durable solutions to these persons, including local integration, and address their lack of personal documentation as a matter of priority.

### **Human trafficking**

#### *Findings of the first cycle*

130. In its first Opinion, the Advisory Committee noted the negative impact of human trafficking on the protection of persons belonging to national minorities and called on the authorities to take decisive measures for the prevention, investigation and prosecution of such cases.

*Present situation*

## a) Positive developments

131. An anti-trafficking strategy was adopted by the Serbian authorities, with the setting up of the office of an anti-trafficking coordinator involving governmental agencies as well as NGOs. More recently, an awareness-raising campaign to encourage reporting of trafficking cases has been launched by a local NGO and the OSCE.

## b) Outstanding issues

132. Recent reports have evidenced that Serbia, which has been predominantly a country of transit, has become also a country of origin of trafficking in recent years with figures on internal trafficking on the rise. The Advisory Committee notes with deep concern that recent cases included an increased number of children being trafficked, among them Roma children.

*Recommendation*

133. The Advisory Committee urges the Serbian authorities to take further measures to put an end to human trafficking. They should also ensure the effective involvement of representatives of the Roma community and in particular Roma women in the context of the implementation of their anti-trafficking strategy.

**Manifestations of violence against religious communities***Findings of the first cycle*

134. In its first Opinion, the Advisory Committee noted with concern cases of vandalism against Jewish religious sites and other manifestations of anti-Semitism, and called on the authorities to pay particular attention to the prevention, investigation and prosecution of such incidents.

*Present situation*

135. Some further cases of attacks against religious sites, including Catholic, Muslim and Jewish sites have occurred since the Advisory Committee adopted its first Opinion in 2003. These include acts of vandalism against churches and mosques and desecration of Jewish graves and dissemination of anti-Semitic literature. The Advisory Committee notes with deep concern the reported lack of adequate investigation of such cases as well as the lenient sentences for the perpetrators.<sup>28</sup>

*Recommendation*

136. The Advisory Committee urges the Serbian authorities to take the necessary measures to prevent, investigate and prosecute all forms of violence against religious communities, including anti-Semitic attacks.

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<sup>28</sup> See the Report on Serbia of the European Commission against Racism and Intolerance of 29 April 2008, CRI(2008)25.

## **Article 7 of the Framework Convention**

### **Freedom of assembly**

#### *Findings of the first cycle*

137. The Advisory Committee considered that any undue citizenship criteria should be removed from constitutional and other guarantees pertaining to the implementation of Article 7 of the Framework Convention.

#### *Present situation*

138. The Advisory Committee notes with concern that Article 54 of the 2006 Constitution of Serbia limits the freedom of assembly to citizens. As already explained in the context of Article 3 (see above), the Advisory Committee finds that introducing a citizenship requirement constitutes an undue limitation to national minorities' right to assemble and is therefore not compatible with Article 7 of the Framework Convention.

#### *Recommendation*

139. The Serbian authorities should ensure that the freedom of assembly, as contained in the Constitution, is systematically interpreted and applied in a manner that is consistent with Article 7 of the Framework Convention. This implies that no undue citizenship requirement should apply to the exercise of freedom of assembly.

## **Article 8 of the Framework Convention**

### **Freedom of religion**

#### *Findings of the first cycle*

140. In its first Opinion, the Advisory Committee called on the authorities to ensure that any difference of treatment of religious entities in the army and education contexts should pay due attention to the right of persons belonging to national minorities to manifest their religion or beliefs and the right to equality. The Advisory Committee also called on the authorities to pay particular attention to these rights when drafting a new law on religious freedom.

#### *Present situation*

##### a) Positive developments

141. Freedom of thought, conscience and religion is guaranteed in Article 43 of the 2006 Constitution of Serbia, including the right not to declare one's religious or other beliefs.

##### b) Outstanding issues

142. The Advisory Committee finds that the Law on Churches and Religious Communities which was adopted in 2006 gives rise to a number of concerns.<sup>29</sup> These relate in particular to the obligation for those religious organisations which are not among the seven "traditional churches

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<sup>29</sup> See the Comments made by the Venice Commission on the draft law on religious organisations in Serbia adopted on 9-10 June 2006, CDL-AD (2006)024.

and religious communities”<sup>30</sup> listed in the law to re-register following a complex procedure which involves the obligation to submit the names and signature of the members of the religious community concerned.<sup>31</sup> The Advisory Committee further notes that while there is no obligation for churches and religious communities to register, non-registered churches are not able to benefit from certain rights such as the right to acquire legal personality or the right to construct religious buildings. In view of the foregoing, the Advisory Committee finds that the Serbian legal framework raises issues of compatibility with both the principle of free self-identification contained in Article 3 and the right to establish religious institutions enshrined in Article 8 of the Framework Convention.

143. A further complication for those persons belonging to national minorities whose religion is not included among the seven traditional churches results from the provision of the law (Article 21) according to which religious organisations whose name contains the same or part of the name of a church that has already been entered into the register may not be entered into the Register. This provision affects in particular orthodox churches other than the already registered Serbian Orthodox Church. The Advisory Committee notes in particular, that such a provision was invoked, among other grounds, to deny registration of the Montenegrin Orthodox Church. It further notes that in its last decision, dated 18 June 2008, to reject the application of the Montenegrin Orthodox Church, the Ministry of the Interior referred to the fact that registering the Montenegrin Orthodox Church would entail a territorial overlapping between the Montenegrin and Serbian Orthodox dioceses which would be against Orthodox Church law. The Advisory Committee acknowledges that the Serbian Orthodox Church played a particular role in the history of the country and may therefore have a dominant position. However, the Advisory Committee finds that the authorities should respect all religious communities and churches in line with Article 7 of the Framework Convention and that any restriction to this right should be understood within the limits of Article 9 paragraph 2 of the European Convention on Human Rights.<sup>32</sup>

144. The Advisory Committee received reports from representatives of the Vlach-Romanian minorities that the police interrupted Romanian language services in Romanian Orthodox Churches in the Eastern part of the country. It also notes that there have been instances of harassment of priests belonging to the Vlach-Romanian minorities. These reported interferences with the right of persons belonging to national minorities to manifest their religion raise issues of compatibility with Article 8 of the Framework Convention.

145. The Advisory Committee further notes that the introduction of religious education in public schools has triggered dissatisfaction among representatives of national minorities. In particular, smaller religious communities with less resources reported difficulties in organising themselves for such teaching, notably in the absence of sufficient teaching staff. The Advisory Committee finds it particularly inappropriate that religious education is only given in relation to the seven religions considered as “traditional religions” and that classes of religion are only

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<sup>30</sup> The “traditional churches and religious communities” recognised in the law are the following : Serbian Orthodox Church, Roman Catholic Church, Slovak Evangelical Church, Reformed Christian Church, Evangelical Christian Church, Islamic community and Jewish Community.

<sup>31</sup> See Article 20 of the Law which requires the religious organisations to submit to the Ministry [...] “(1) the decision on founding the organisation with names, surnames, number of identification documents, signatures of at least 0,001% of the Republic of Serbia citizens of age with residence in the Republic of Serbia [...]”

<sup>32</sup> Article 9 paragraph 2 of the ECHR reads as follows: “Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others”.

offered as an alternative to civic education. The Advisory Committee regrets that religious instruction in Serbia does not seem to involve teaching of the history and culture of religions, which would contribute to a better understanding and tolerance between the various religious communities. The Advisory Committee was given to understand however from its dialogue with the authorities that it is envisaged to revise the existing arrangements for religious instruction. It therefore expects that the authorities will use this opportunity to introduce the teaching of history and culture of religions.

146. The Advisory Committee received information from the Bosniac community that difficulties are still reported with regard to respecting religious diversity, in particular with regard to the lack of respect for religious dietary rules in the army.

#### *Recommendations*

147. The Advisory Committee urges the Serbian authorities to ensure that the right of persons belonging to a national minority to establish religious institutions, organisations and associations is fully guaranteed both in the legislation and in its subsequent implementation. This includes the need to remove any requirement that would go beyond the limitations foreseen in Article 9 paragraph 2 of the European Convention of Human Rights as interpreted by the European Court of Human Rights.

148. The Advisory Committee calls on the Serbian authorities to ensure that there is no unjustified limitation to the right of persons belonging to national minorities to practice their religion in public and in private, alone or in community with others.

149. The Advisory Committee encourages the Serbian authorities to ensure that adequate provision is made for the teaching of the history and culture of religions in the context of their planned revision of religious education.

### **Article 9 of the Framework Convention**

#### **Legislative framework relating to minority media**

##### *Findings of the first cycle*

150. The Advisory Committee found that the Broadcasting Law lacked clarity with regard to the application of a Serbian language quota for broadcasters using a minority language. The authorities were invited to clearly exclude programming in minority languages from any undue language quota to broadcast in the Serbian language.

##### *Present situation*

151. Debates on legislation relating to minority media have recently been dominated by the issue of privatisation of the media. Indeed, according to the current legislation (2002 Broadcasting Law and 2003 Public Information Law), media privatisation, including media in minority languages, should have been completed by the end of 2007. However, a new set of laws (namely the Law on Local Self-Governance and the Law in the Capital City Belgrade) was passed in late 2007 allowing local authorities to continue their ownership over minority language media.

152. The Advisory Committee acknowledges that the impact of privatisation on the sustainability of media in minority languages has raised legitimate concerns among representatives of national minorities. However, the Advisory Committee notes that there are

diverging views regarding this exemption from privatisation of minority media. Against this background, the Advisory Committee regrets that the introduction of such an exemption has not been preceded by adequate consultations with all the relevant stakeholders, including representatives of national minorities. The Advisory Committee finds that, as a result, there is great confusion and sometimes tension, between private media outlets and municipally owned ones.

153. The Advisory Committee notes with concern that Serbian authorities have not taken measures to follow up on its recommendation to exempt explicitly minority language broadcasters from the obligation to have 50% of their broadcasting time in Serbian (Article 73, paragraph 1 of the Broadcasting Law). As mentioned in its first Opinion, the Advisory Committee finds that the application of such a language quota would pose disproportionate obligations to minority language broadcasters operating at local and regional levels.

154. Digital broadcasting should replace terrestrial broadcasting by 2012 in Serbia. Such an evolution may open up new possibilities for minority media but at the same time new obstacles, including technological ones, could emerge. Such a switchover therefore needs to be carefully prepared and its impact on the access of national minorities to media in minority languages should be thoroughly analysed in advance.

#### *Recommendations*

155. The Serbian authorities should ensure that there are no discrepancies in the legal framework relating to minority media. The authorities should ensure that the legal solution found maintains the obligation of the State to guarantee adequate conditions for the right of national minorities to create and use their own media and pay due attention to its consequences on media content in order to ensure the existence of plurality and adequate coverage of minority issues.

156. The Serbian authorities should exempt explicitly broadcasters using minority languages from the obligation to have 50% of the broadcasting time in Serbian.

157. The switchover to digital TV should be carefully prepared, in due consultation with national minorities, including through their national councils, with a view to ensuring that such a change results in positive developments for the access to media of persons belonging to national minorities.

### **Access to media of persons belonging to national minorities and minority media empowerment**

#### *Findings of the first cycle*

158. In its first Opinion, the Advisory Committee considered that the authorities needed to pay increased attention to the shortcomings identified in terms of access to media by certain national minorities such as the Vlachs and the Roma.

#### *Present situation*

##### a) Positive developments

159. The Advisory Committee notes that there is currently an important amount of broadcasting in minority languages as well as a considerable number of newspapers and other publications in minority languages in Serbia.

b) Outstanding issues

160. No progress was reported with regard to increasing the availability of minority language broadcasting in certain regions of the country. In particular, the Advisory Committee notes that in the absence of re-broadcasting of the Romanian language programme of Radio and Television Novi Sad in North-East Serbia, the Vlachs living in this region do not have access to broadcasts in their minority language.

161. Certain national minorities highlighted that one particular problem in accessing minority broadcasting results from the difficulties in obtaining or retaining regional frequencies which would enable broadcasting companies to reach out to the territorially dispersed minority. The Advisory Committee notes in particular that following the decision of the Radio Broadcasting Agency of March 2008, Radio Subotica switched from a regional to a local frequency, excluding those Croats living outside Subotica from accessing programmes in their language. Similar concerns were expressed by the Hungarian minority regarding the lack of coverage of Southern Banat or Western Backa in the territory of the Province of Vojvodina.

162. A related problem concerns the fact that “licenses for civil sector radio and television” which are providing more favourable conditions for national minorities<sup>33</sup> may only cover local areas (Article 95 of the Law) and are not very much used in practice. Furthermore, the Advisory Committee notes that the programming requirements and standards including in public tenders for regional or local TV stations are such that they *de facto* do not stimulate the provision of information in minority languages. In particular, the provision requiring that 50% of the programmes be self-produced is considered excessive for minority language broadcasters.

163. The Advisory Committee notes that electronic media in minority languages often lack adequate equipment and resources, including human resources, to provide quality programming. Against this background, a number of minority representatives expressed the view that attracting young and adequately trained journalists is likely to constitute a serious challenge ahead to ensuring continuity in minority programming. This situation has already resulted in difficulties for some minority programmes such as programmes in the Ruthenian language. It also resulted in difficulties to maintain an equal share between programmes in minority language and Serbian language as reported for example for Bulgarian programmes in Local TV Radio Caribrod.

164. The Advisory Committee further notes that according to a survey, one third of the persons belonging to national minorities show discontent with the media in their own language, citing *inter alia* reasons of lack of expertise and sometimes politically influenced editorial policies.<sup>34</sup> In particular, the Advisory Committee understands from representatives of the Bosniac community that minority media in Sandžak are particularly exposed to political influence. Such a situation has caused increasing dissatisfaction among persons belonging to this minority.

165. The Advisory Committee finds that the current lack of minority participation in the RBA Council (see also above, under Article 6) which determines the conditions and procedures for issuing radio and TV licenses, may also negatively affect the access of persons belonging to national minorities to media in minority languages. It notes that, as far as the Province of Vojvodina is concerned, dissatisfaction was expressed by some minorities, including the

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<sup>33</sup> According to Article 67 of the Broadcasting Law, civil sector radio and television are exempted from paying the broadcasting fee.

<sup>34</sup> “Right to information in minority languages in Serbia”, published by Fund for an Open Society, Belgrade 2007.

Hungarian minority, regarding the lack of attention paid to minority representation in the Management Board of Radio and Television Novi Sad.

### *Recommendations*

166. The Serbian authorities are encouraged to take positive measures to facilitate access of national minorities to broadcasting licenses both at regional and local levels. This would be particularly important for those minorities who are not compactly settled on the territory of Serbia.

167. The Serbian authorities should take measures to promote the development of professional training, including vocational training of journalists belonging to national minorities.

## **Article 10 of the Framework Convention**

### **Use of minority language in relations with local administrative authorities**

#### *Findings of the first cycle*

168. In its first Opinion, the Advisory Committee welcomed the obligation provided for in the Law on National Minorities, to introduce “the official use” of minority languages in those local self-government units where the number of persons belonging to the national minority concerned has reached 15%. It also welcomed the possibility given to the local authorities to introduce this measure even with a lower threshold. At the same time, the Advisory Committee, noting the different approaches adopted in different municipalities, invited the authorities to ensure that this legal obligation be implemented in all municipalities concerned.

#### *Present situation*

##### a) Positive developments

169. The Advisory Committee welcomes the fact that in Vojvodina, a more flexible application of the threshold of 15% of the population for the official use of a minority language (as stated in the Law on National Minorities) has been introduced<sup>35</sup> and that efforts have been made to increase the availability of information on the possibility to use minority languages in local administrative offices as well as to increase the number of forms translated into minority languages.

170. In practice, there is, on the whole, a positive implementation in the use of minority languages in the territory of Vojvodina as evidenced by the fact that minority languages are in official use in 39 of the 45 municipalities of Vojvodina.

171. At the central level, steps have been taken by the Ministry of the Interior to provide guidelines to its local units on processing oral and written submissions in minority languages.

##### b) Outstanding issues

172. Despite the reported high level of implementation of the right to use minority languages in relations with local administrative authorities in Vojvodina, difficulties persist with regard to the official use of certain languages such as Macedonian and Romanian in some localities of

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<sup>35</sup> In Vojvodina, the languages of minorities constituting 25% of the population of a settlement as opposed to a municipal entity, may be used in relations with the local offices in the settlement concerned.

Pančevo municipality. Recent attempts by some municipalities to abolish the official use of minority languages in their territory points out the potentially precarious situation of the status of minority languages at local level.

173. The implementation of Article 10 of the Framework Convention has been rather slow in other parts of Serbia. While Albanian has been introduced as an official language in the three municipalities of South Serbia, where Albanians live in substantial numbers, funds are lacking to make this provision fully operational. Requests to introduce the Bosnian language in municipalities other than Novi Pazar, Tutin and Sjenica municipalities, have been left unanswered.

#### *Recommendation*

174. The Serbian authorities should make additional efforts to ensure a more consistent implementation of the existing legal framework relating to the use of minority languages in relations with local administrative authorities and make the necessary resources available to this end.

### **Article 11 of the Framework Convention**

#### **Names and surnames in minority languages**

##### *Present situation*

175. The Advisory Committee welcomes the fact that the right to use one's name and surname in a minority language is referred to in various pieces of legislation and regulations in Serbia including the 2001 Law on the Official Use of the Language and Script, the 2002 Law on National Minorities<sup>36</sup> as well as the 2005 Family Law.<sup>37</sup>

176. There are however great variations in the interpretation of this right in different parts of Serbia. The decision adopted by the Executive Council of Vojvodina on multilingual forms for birth certificates has introduced some commendable provisions regarding the issuing of certificates in minority languages. At the same time, the Advisory Committee notes that according to the aforementioned decision, the right to have one's name registered in a minority language can only be requested in those municipalities where the language of the person concerned is in official use. The Advisory Committee recalls that Article 11 paragraph 1 of the Framework Convention applies to all persons belonging to a national minority irrespective of his or her place of residence and of the status of the minority languages in that area. The Advisory Committee considers therefore that limiting the right to use one's name in the minority language to those areas where the minority language concerned has official status constitutes an undue limitation which is not compatible with Article 11 paragraph 1 of the Framework Convention.

177. The Advisory Committee notes that in the absence of a harmonised procedure for registering names in minority languages, a number of difficulties have arisen in practice. Although increasingly used in certain municipalities of Vojvodina, registry offices are often

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<sup>36</sup> Article 9 of the Law on National Minorities provides for the right of persons belonging to a national minority to freely choose and use personal names and to obtain their inscription in all public documents and records in their language and script.

<sup>37</sup> While not specifically referring to minority languages, Article 350 of the Family Law provides for the right of the parents to have their child's name entered in the register of births also in the mother tongue and alphabet of one of them.

reported to invoke the lack of the necessary bilingual forms in order to deny the issuance of certificates in minority languages. In addition, problems are still reported with regard to the lack of registration of the suffix attached to female surnames in certain Slavic languages (namely in Macedonian, Slovak, Bulgarian and Ruthenian).

*Recommendation*

178. The Serbian authorities should ensure that the legal regulations governing the right to use personal names in minority languages and their official recognition are interpreted in conformity with Article 11 of the Framework Convention. In this respect, they should remove any territorial limitations to this right. They should ensure that the conditions for the proper and consistent implementation of this right are in place, including by adopting harmonised procedures and by training registry officers. They should further ensure that the procedures for restoring names function effectively and that persons belonging to national minorities are sufficiently informed of their existence.

**Display of signs, inscriptions  
and other information of a private nature visible to the public**

*Findings of the first cycle*

179. The Advisory Committee found that the authorities should review Article 20 of the Law on the Official Use of Language and Script of Serbia according to which the annotation of an enterprise, institution and other legal persons may be written, in addition to Serbian, also in the language of a national minority that is in official use in the location of the seat or business of the entity.

*Present situation*

180. The Advisory Committee notes with concern that no changes to the provision concerned have been introduced. The Advisory Committee maintains that this provision is too restrictive as it may be interpreted as preventing persons belonging to a national minority from displaying certain information of a private nature visible to the public also in a language that is not in official use. It recalls that the expression “of a private nature” in Article 11 of the Framework Convention refers to all that is not official.

*Recommendation*

181. The Advisory Committee calls on the Serbian authorities to ensure that Article 20 of the Law on the Official Use of Language and Script of Serbia is brought in line with Article 11 of the Framework Convention.

**Topographical signs**

*Findings of the first cycle*

182. The Advisory Committee found that additional efforts are needed in practice to implement the guarantees set out in the Framework Convention concerning the display of traditional place names and topographical signs in minority languages.

*Present situation*

a) Positive developments

183. The Advisory Committee recalls that Article 11 of the Law on National Minorities provides that local names and street names and other topographical indications shall be also be displayed in the language of national minorities in those areas where that language is in official use.

184. There has been a reported increase in the display of traditional names and topographical signs in minority languages in the Province of Vojvodina, which is a welcome development. The Advisory Committee notes in particular the positive contribution of some national councils of national minorities in determining the traditional local names, in conformity with the decision of the Provincial Assembly on the official use of languages and scripts of national minorities.<sup>38</sup>

b) Outstanding issues

185. Despite the above-mentioned achievements, a number of difficulties are still reported with regard to the implementation of the right to display traditional place names in minority languages. These difficulties relate to a reported resistance of some local authorities and to frequent misspelling of place names which are transcribed according to Serbian spelling rather than the spelling of the minority language concerned. The Advisory Committee notes that an additional complication lies with the fact that existing signposts include the name of the locality in Serbian in both Latin and Cyrillic scripts, to the exclusion of the minority language.

186. In addition, while a number of positive practices have been established in Vojvodina, the situation is far less developed in other parts of Serbia. A lack of implementation has been reported in municipalities inhabited by the Vlachs-Romanians in North East Serbia, and certain municipalities inhabited by the Bosniacs in the Sandžak region, which are both areas where the minorities concerned constitute more than 15% of the population. The Advisory Committee also notes there has not been any positive follow up given so far to the demand of the Bulgarian minority to have the name of the city of Dimitrovgrad changed to its traditional name (Caribrod) and considers that this situation merits further examination.

*Recommendation*

187. The Serbian authorities should monitor the implementation of the legal guarantees concerning the display of traditional place names and topographical signs in minority languages, in consultation with the national councils of the national minorities concerned and should ensure that they are consistently implemented throughout Serbia.

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<sup>38</sup> According to the said decision of the Provincial Assembly of Vojvodina, the national councils of national minorities are allowed to establish the traditional names of towns, municipalities and settlements in their languages and are given a three month deadline after the expiry of which the names are determined by the Executive Council of the Autonomous Province of Vojvodina. So far, the Hungarian, Romanian and Slovak national councils have established these names. Traditional place names in the Ruthenian language were established by the Executive Council in the absence of a decision by the Ruthenian national council within the fixed deadline.

## Article 12 of the Framework Convention

### Teacher training and textbooks

#### *Findings of the first cycle*

188. In its first Opinion, the Advisory Committee called on the authorities to ensure that the growing privatization of the production and sale of textbooks does not harm the affordability of textbooks published in minority languages.

189. The Advisory Committee found that additional efforts were needed to address the various shortcomings in terms of the availability of qualified teachers.

#### *Present situation*

##### a) Positive developments

190. The Advisory Committee acknowledges the continuous efforts that have been made to publish additional textbooks in the languages of minorities, including in the Roma language and that some further opportunities for teacher training have been made available, notably for the Hungarian minority in the teacher training faculty of Subotica.

191. The Advisory Committee welcomes the positive role played by the national minority councils in preparing curricula for the subjects presenting a specific interest for national minorities, in line with Article 13 of the Law on National Minorities. Despite the fact that a national council of the Albanian minority has not yet been established, Albanian teachers of the municipalities of South Serbia have been involved in amending curricula in the Albanian language with good results in some subjects. A Roma teacher association was formed in the Province of Vojvodina and although there remains scope for improvement, the contribution of Roma assistants in facilitating communication between teachers and the Roma children has been positively assessed (see also below).

192. Representatives of certain national minorities, in particular the Bulgarian and Slovak minorities have reported positive examples of co-operation with the Ministry of Education in facilitating the importation of textbooks from their “kin-state”.

##### b) Outstanding issues

193. Concerns remain regarding the delays in the printing of some textbooks and their costs.

194. The Advisory Committee notes that textbooks imported from abroad with the approval of the Ministry of Education have caused difficulties for some national minorities, including the Albanian minority, as they are not adapted to the school curriculum of Serbia. In addition, the Advisory Committee is of the view that the content of imported books may not reflect adequately local perspectives and may also be problematic in light of the principle of intercultural education set out in Article 12 of the Framework Convention.

195. While there have been clear improvements, history and some other textbooks still do not adequately reflect minorities’ culture or contain biased information concerning certain national minorities as reported notably by the Bosniac, Albanian and Roma minorities.

196. The insufficient number of qualified teachers in minority languages continues to be a problem. Notwithstanding the various programmes of co-operation between Serbia and its

minorities' "kin-states" on teacher training<sup>39</sup> and the existing teacher training scheme available in Serbia, representatives of some national minorities, notably the Romanian, Hungarian and Slovak minorities have expressed dissatisfaction with the fact that their proposals or initiatives regarding teacher training with the assistance of their "kin-state" have faced obstacles or have not been taken up or not even replied to by the authorities. The Advisory Committee finds that, while it is the responsibility of the State to ensure that the said initiatives correspond to domestic and international educational standards, it is important that support to national minorities in this area is not subject to any undue restrictions or obstacles<sup>40</sup> and that the request made by persons belonging to national minorities is given a response. The Advisory Committee further notes that the issue of lifelong training and professional development for minority language teachers has not been given proper attention by the authorities so far.

### *Recommendation*

197. The Serbian authorities should take additional measures to ensure that the availability of teacher training and textbooks adequately reflects the needs expressed by national minorities and that the related proposals made by their councils are followed-up. In so doing, the authorities should pay particular attention to the quality as well as the continuity of the training available and ensure that the textbooks' content is suited to the Serbian school curriculum.

### **Situation of the Roma**

#### *Findings of the first cycle*

198. In its first Opinion, the Advisory Committee found that Roma children are frequently placed in "special schools" designed for children with mental disabilities on the basis of tests that do not take into account the needs and culture of Roma. Given the fact that some municipalities have established specific classes for Roma, the Advisory Committee further considered that the authorities should pursue their efforts to allow the Roma children to stay in regular classes and encourage them to do so.

199. The Advisory Committee noted that the low school attendance and high drop-out rates amongst Roma children, especially girls, were persistent problems in terms of access of Roma to education.

200. The Advisory Committee also found that a specific priority area should be the elimination of barriers, including linguistic ones, that many displaced Roma from Kosovo and Roma repatriated from abroad face in accessing education.

#### *Present situation*

##### a) Positive developments

201. The Advisory Committee welcomes the fact that both issues of desegregation and prevention of segregation have been included in the Action Plan for Roma Education. Teaching assistants have reportedly played a positive role in preventing the channelling of Roma children to "special schools", although there remain problems with the genuine integration of these children into the education system.

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<sup>39</sup> See State Report, page 286.

<sup>40</sup> See also, the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations adopted by the OSCE High Commissioner on National Minorities, June 2008.

202. The Advisory Committee welcomes the fact that the Ministry of Education and Sports issued a specific instruction to school heads to enrol children even though they do not have complete personal documentation. This is particularly important as it caused a problem both for local Roma and IDPs from Kosovo and returnees from Western European countries. Although not monitored in practice, NGOs working in the field of education reported that primary schools have generally been quite flexible with the personal documentation requirement.

203. In addition some positive measures have been taken such as the provision of free textbooks for Roma children in primary education and support to the enrolment of Roma pupils in secondary education, notably through scholarships.

b) Outstanding issues

204. There has not been any major progress as regards the segregation of Roma in “special schools”. The Advisory Committee notes that, according to the information provided by non-governmental organisations, the practice of enrolling Roma children in “special schools” without any mental disability still occurs. The Advisory Committee recalls that the European Court of Human Rights has found that the practice of placing Roma children in “special schools” constitutes a breach of Article 14 (prohibition of discrimination) read in conjunction with Article 2 of Protocol 1 (right to education) of the European Convention of Human Rights.<sup>41</sup> The Advisory Committee notes that the measures of the Decade Action Plan regarding this issue have been mostly taken on an *ad hoc* basis. Resistance, including among the teaching staff, as well as a lack of adequate transitory measures have not enabled the expected transfer of Roma children already in “special schools” to mainstream schools. In addition, Roma organisations have highlighted that Roma parents are not always informed of the possibility to have their children educated in a mixed environment. The Advisory Committee regrets the fact that the Serbian authorities have not launched any specific research on the extent of segregation of Roma in “special schools”. At the same time, the Advisory Committee notes with concern the information according to which the proportion of Roma students placed in “special schools” could range between 50 and 80%.<sup>42</sup> The Advisory Committee finds it alarming that the insufficient level of proficiency in the Serbian language of Roma children is still frequently referred to in order to explain their misplacement in special schools.

205. Information received from various sources confirms that drop-out rates of Roma children are still high, especially in the second and third grades as well as a high rate of absenteeism among this group.<sup>43</sup> In addition, the quality of education in classes with a high percentage of Roma children is markedly lower than in classes with a lower percentage of Roma. Discriminatory attitudes from the teaching staff and school administration persist, with a regrettably low awareness of the school inspectorate on the need to address discrimination of Roma pupils (see also Article 4 above). The Advisory Committee regrets the fact that while local authorities are given greater competences in school management under the Law on the Foundation of the Education system, there are hardly any Roma parents participating on school boards.

206. Pre-school education was made compulsory in 2006 in Serbia. While it could provide a useful tool for a better inclusion of Roma into the school system, its introduction during the

<sup>41</sup> See D.H. and others against the Czech Republic, Grand Chamber Judgement, 13 November 2007, Application no. 57325/00.

<sup>42</sup> See Equal Access to Quality Education, Monitoring Report on Serbia, Open Society Institute, 2007.

<sup>43</sup> See UNDP, Vulnerable Groups in Central and Southeast Europe, Bratislava, 2005.

school year 2007/2008 revealed new problems in terms of required documents<sup>44</sup> which many Roma parents are unable to provide and segregation in separate classes. Preliminary data show that in the school year 2007/2008, 60% of those attending primary schools did not attend the pre-school preparatory programme or they only did so for a limited period.<sup>45</sup>

207. While recent steps have been taken to extend the existing contracts of Roma teaching assistants, the authorities have not yet taken structural measures to make their posts sustainable and to regulate their status and recruitment. This has occasionally created resistance among the school administration to hire them.

208. The Advisory Committee is deeply concerned to note that Roma children displaced from Kosovo and Roma repatriated from countries of Western Europe are still reported to be sent to Serbian language schools without any language learning support, even though they lack basic Serbian linguistic skills. As a consequence, they are unable to follow classes and the drop-out rate is reportedly high among these children. The Advisory Committee finds that such a situation needs to be remedied urgently.

### *Recommendations*

209. The Advisory Committee calls on the authorities to take all the necessary measures to put an end to the persisting practice of placing Roma children in “special schools” designed for children with mental disabilities. In particular, the authorities are urged to review the placement tests for such schools by involving Roma professionals and to ensure that such placements are only done on the basis of objective and standardised tests, that duly take into account the linguistic and cultural circumstances of the Roma.

210. Serbia should ensure that Roma teaching assistants are fully integrated into the teaching and education structure and that there is an increased awareness about their role among the teaching staff and school administration. Increased and meaningful involvement of Roma parents in the work of the schools is also needed.<sup>46</sup>

211. The Serbian authorities should take appropriate monitoring measures in order to ensure that all schools, including pre-schools, comply with the instructions relating to the enrolment of pupils with incomplete documentation and remove any undue administrative and other obstacles. The Advisory Committee urges the Serbian authorities to ensure, including through the adoption of relevant regulations, that Roma displaced from Kosovo and Roma returnees from Western European countries, who lack proficiency in Serbian, are given adequate language learning support.

## **Recognition of diplomas**

### *Findings of the first cycle*

212. The Advisory Committee considered that the authorities should find appropriate and balanced solutions to the question of the non-recognition or delay in the recognition of certain diplomas from educational institutions abroad and from Kosovo.

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<sup>44</sup> These include birth certificates and photocopies of the employment cards.

<sup>45</sup> 2007 Yearly Report of the League for the Roma Decade, Minority Rights Centre, January 2008.

<sup>46</sup> See the Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, adopted on 27 February 2008

*Present situation*

## a) Positive developments

213. The Advisory Committee welcomes the fact that in October 2008, the Serbian authorities decided to recognise diplomas from Kosovo with UNMIK seals. This is a positive first step to enable those who graduated in Kosovo to pursue their education and/or access employment in Serbia without any undue obstacle.

## b) Outstanding issues

214. Representatives of national minorities, including the Romanian, Hungarian and Macedonian minorities have expressed concern at the persistent delays as well as the disproportionate requirements for obtaining the recognition by Serbia of diplomas delivered by their “kin-state”. A similar concern was expressed by representatives of the Albanian minority for those students who have graduated from the universities of Albania or “the former Yugoslav Republic of Macedonia” (see also below).

*Recommendation*

215. The Serbian authorities are encouraged to find comprehensive and adequate solutions to the issue of recognition of diplomas issued by educational institutions in Kosovo. There is also a need to ensure that the competent Serbian educational authorities issue their recognition decisions of diplomas of other institutional establishments of the region within a reasonable time-frame.

**Equal opportunities in access to higher education***Present situation*

216. The lack of opportunities for Albanian students in South Serbia to access higher education, especially in the Albanian language, remains a concern. This means in practice that students belonging to the Albanian minority have to move to Albania, “the former Yugoslav Republic of Macedonia” or Kosovo to access higher education. This shortcoming is acknowledged by the Serbian authorities who are currently working on an educational plan for the Albanian minority in order to address the situation. The Advisory Committee notes in particular the plans made to open branches of the University of Niš first in Medveđa and later in Bujanovac. Both should offer education in Serbian and Albanian.

*Recommendation*

217. The Serbian authorities should pursue further their plans to provide Albanian students with adequate higher educational opportunities in Serbia, taking due account of the views expressed by representatives of the Albanian minority.

**Article 14 of the Framework Convention****Teaching in and of minority languages***Findings of the first cycle*

218. In its first Opinion, the Advisory Committee found that there were gaps with regard to the teaching in or of certain minority languages. It encouraged the authorities to analyse the demand expressed by the Vlachs in North-East Serbia and asked them to review the situation

with regard to the implementation of teaching in or of minority languages with regard to the Bosniac minority.

219. The Advisory Committee considered that the teaching of Serbian should be introduced in a manner that does not discourage pupils from opting for minority language teaching.

*Present situation*

a) Positive developments

220. The Advisory Committee welcomes the promising steps taken by the authorities of the Province of Vojvodina to gather information on education in minority languages, including on the number of teachers holding classes in a minority language.

221. The Advisory Committee welcomes the fact that the availability of minority language teaching has increased, with Bosnian, Bunjevac, Macedonian and Roma languages being introduced as “optional subjects with elements of the national culture”. It also notes with satisfaction that minority language teaching has been expanded to further levels with, for example, Croatian being taught in secondary schools even though the threshold of 15 pupils required for opening a class had not been reached.

b) Outstanding issues

222. The right to education in minority languages is enshrined in the 2006 Constitution (Article 79) and referred to in other legislation such as the Law on National Minorities, the Law on Elementary Education, and the Law on Higher Education. However, in the absence of operative regulations regarding the modalities of implementation of the rights set forth, educational institutions are given extensive latitude to regulate the organisation of studies in minority languages.

223. The Advisory Committee further notes that while there have been some positive examples, in particular in the Province of Vojvodina of lowering the number of students required to organise teaching in a minority language or bilingual teaching (see paragraph 220 above), representatives of national minorities highlighted that in some other areas, their requests have met with strong resistance in the municipality where they live in substantial numbers. This is particularly so with regard to the demand expressed regularly by the Vlach minority regarding the introduction of the teaching of their language.

224. The Advisory Committee notes that the repeated demands by representatives of national minorities through their national councils to include the learning of the mother tongue with elements of national culture as a mandatory subject have not been given consideration so far by the Serbian authorities. The Advisory Committee considers that the teaching of minority languages as an optional subject does not sufficiently encourage minority pupils to learn their mother tongue while pursuing their studies and that it is likely to affect negatively their ability and motivation to preserve their mother tongue.

225. While welcoming the introduction of teaching of the Bosnian language in primary education, the Advisory Committee has been informed of the widespread concerns of the Bosniac community concerning the lack of quality of the teaching provided in such classes. According to some Bosniac cultural associations, this obstacle contributed to a decrease in the number of pupils registered in such classes.

*Recommendations*

226. The Serbian authorities should consolidate the legislative framework regarding minority language teaching. This requires the adoption, in close co-operation with representatives of national minorities, of additional regulations and practical measures regarding the various models of minority language teaching. In particular, there is a need to review the optional character of the subject referred to as “mother tongue with elements of the national culture”.

227. The Serbian authorities should encourage the local authorities to favour a more flexible approach in adapting the number of pupils required to open a minority language class in order to meet the actual needs expressed by minority communities. This is especially important in North-East Serbia.

228. While supporting the possibility given to national councils of national minorities to participate in the development of minority education, the Advisory Committee considers that it is important that the Serbian authorities take the necessary measures to ensure that the education provided in minority language classes meets the educational standards applied in other parts of Serbia.

**Article 15 of the Framework Convention****Representation in elected bodies***Findings of the first cycle*

229. In its first Opinion, the Advisory Committee found that further improvements are needed to address the low representation of certain national minorities, in particular the Roma, in elected bodies at local and regional level. It also encouraged the authorities to pursue their reform of the electoral legislation, including the envisaged exemption of national minorities from the 5% threshold of the votes cast in order to obtain a seat in the Parliament.

*Present situation*

## a) Positive developments

230. The Advisory Committee notes with satisfaction that Serbian legislation includes commendable provisions regarding the representation of national minorities to elected bodies both at national and provincial levels. In particular, the Advisory Committee welcomes the fact that the 2004 Law on the Election of Representatives abrogated the 5% threshold of votes cast for parties of national minorities to enter the Parliament.<sup>47</sup> The Advisory Committee notes that as a result of this amendment, numerous political parties of national minorities have been able to gain seats in the Parliament.

231. At local level, the Advisory Committee notes that Article 180 paragraph 3 of the 2006 Constitution provides for a proportional representation of national minorities in assemblies in those autonomous provinces and local self-government units with an ethnically mixed population. The Advisory Committee further welcomes the fact that the 2007 Law on Local

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<sup>47</sup> See Article 81 paragraphs 2 to 3 of the 2004 Law on the Election of Representatives:

“Political parties of ethnic minorities and coalitions of political parties of ethnic minorities shall participate in the distribution of mandates even when receiving less than 5% of the total number of votes.

All parties whose basic aim is to represent and stand for the interests of an ethnic minority and the protection and improvement of the rights of members of ethnic minorities, in accordance with standards set forth by international law, shall be considered political parties of ethnic minorities.”

Elections foresees that in municipalities in which the languages of national minorities are in official use, the ballot papers shall also be printed in those languages.

b) Outstanding issues

232. The Advisory Committee received complaints from national minorities, especially from the Roma and Albanian minorities, regarding the fact that the regulation of the Electoral Commission to reduce the number of signatures required in support of an electoral list from 10 000 to 3 000 signatures was ruled out by the Constitutional Court of Serbia in April 2008. As a result, the 10 000 signatures requirement was applied to all political parties in the general elections of May 2008. The Advisory Committee notes that such a decision has affected negatively the numerically smaller minorities as they have faced difficulties to meet the required number of signatures. Furthermore, the Advisory Committee notes that this requirement was introduced only a month before the general elections took place. As a consequence, national minority parties were given too little time to adjust to the new conditions, which in the Advisory Committee's view, is not satisfactory.

233. The Advisory Committee understands that there are limits to what any electoral system can guarantee in terms of representation of national minorities in elected bodies. However, given the importance for all persons belonging to national minorities to be able to participate effectively in public affairs, the Advisory Committee finds it essential that persons belonging to national minorities be consulted in due time when measures are to be taken in this area. The Advisory Committee considers that it is also important that the authorities regularly review the arrangements made so as to ensure that the needs of all national minorities, including the numerically smaller minorities, are adequately taken into account.<sup>48</sup>

*Recommendation*

234. The Serbian authorities are encouraged to promote the effective participation of national minorities, including the numerically smaller ones, in the electoral process. In consultation with the representatives of national minorities, they should also undertake periodical reviews of the arrangements in place, in order to ensure that they adequately reflect the needs of persons belonging to national minorities.

**Participation in public administration and in the judiciary**

*Findings of the first cycle*

235. In its first Opinion, the Advisory Committee found that the authorities should take additional measures to ensure a better participation of national minorities in law enforcement bodies and in the judiciary.

*Present situation*

a) Positive developments

236. The Advisory Committee welcomes the fact that the 2006 Constitution includes a specific provision regarding the obligation to take into consideration the appropriate representation of persons belonging to national minorities in public administration (Article 77 paragraph 2). The Advisory Committee notes with satisfaction that further regulations have been adopted by the central and provincial authorities to increase such a representation. These

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<sup>48</sup> See Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, adopted by the Advisory Committee on 27 February 2008, paragraph 86.

regulations include *inter alia* the translation of vacancies in the languages of the national minorities and their dissemination in selected media in co-operation with the national minority councils, and the obligation for the selection committee of the administration body concerned to take into account the existing ethnic distribution within the said administration when selecting equally qualified candidates.

237. The Advisory Committee welcomes the fact that, although not systematically used, vacancies for posts in the judiciary include, as one of the requirements, the knowledge of minority languages which are in official use in the jurisdiction of the court concerned.

238. The Advisory Committee notes with satisfaction the positive results achieved in increasing the representation of the Albanian minority in the police force in South Serbia.

#### b) Outstanding issues

239. While welcoming the above-mentioned guarantees, the Advisory Committee regrets that it was not provided with comprehensive information regarding their implementation and impact on the representation of persons belonging to national minorities in State administrative bodies. It appears, based on the information provided in the State Report, that there is no centralised data regarding the representation of national minorities in public administration. Indeed, while the authorities of the Province of Vojvodina seem to collect some data on the “national affiliation of employees” in branches of the central administration located in the Province, only data on the mother tongue and proficiency in other languages of public servants seems to be available at central level.<sup>49</sup> Against this background, the Advisory Committee finds it difficult to reach conclusive findings on the level of participation of national minorities in relevant areas of public administration in Serbia.

240. The Advisory Committee understands however, from its dialogue with representatives of the Bosniac and the Albanian minorities in Sandžak and South Serbia respectively, that their representation in public administration is markedly lower than their proportion in the population. For example, according to information gathered by representatives of the Albanian minority in South Serbia, progress in increasing the proportion of the Albanian minority in sectors other than the police has been slow and largely limited to units of local administration. As far as the Bosniac minority is concerned, under-representation in the police force is a continuous source of concern (see also Article 6 above). The Advisory Committee finds that this situation calls for increased measures, including training support, in order to increase the participation of these minorities in public administration.

241. As regards the judiciary, the State Report contains statistics regarding the ethnic composition of municipal and commercial courts in Vojvodina. These show that there is an overall adequate representation of national minorities in courts with, however, some significant under-representation for some minorities, such as the Croats. The Advisory Committee further notes that in Sandžak and South Serbia, representation of national minorities in the judiciary is disconcertingly low. The Advisory Committee finds it of the utmost importance that, while fully respecting the independence of the judiciary, the authorities pay due attention to the presence of national minorities in the judiciary. These measures are all the more important as they are likely to increase public confidence in addressing courts with cases alleging discrimination and ethnic violence cases (see also Article 4 and 6 above).

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<sup>49</sup> See page 371 and following of the State Report.

*Recommendations*

242. The Serbian authorities should take measures to collect comprehensive information on the representation of national minorities in public administration at all levels, while fully respecting international standards in the field of personal data protection.

243. The Advisory Committee calls on the Serbian authorities to take vigorous measures to address the under-representation of national minorities in public administration and in the judiciary, in particular for the Albanian and the Bosniac minorities. Specific attention should be paid to ensure an adequate representation of the Bosniacs in the police force in Sandžak.

**Councils of National Minorities**

*Findings of the first cycle*

244. The Advisory Committee found that the authorities should specify the exact role and scope of the activities of the Councils of National Minorities envisaged in Article 19 of the Law on National Minorities, as well as swiftly set up the State level Council for National Minorities envisaged in Article 18 of the said Law.

*Present situation*

a) Positive developments

245. The Advisory Committee welcomes the fact that the 2006 Constitution explicitly provides for the right of persons belonging to national minorities to elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of language and scripts (Article 75 paragraph 3).

246. The Advisory Committee welcomes the fact that a draft law on national minority councils has been prepared by the Serbian Government and that the existing councils of national minorities have been invited to express their views on the draft text. The Advisory Committee further acknowledges the determination of the Serbian Government to adopt this law without further delay once the consultation process with the national minority council has been completed.

247. According to information received by the Advisory Committee, the current draft law provides the national minority councils with extensive competences in the field of culture, education, media, and use of minority languages. In addition, it appears that the draft law includes commendable provisions regarding the minimum level of funding of the national councils by the State, provincial and local authorities. If confirmed by the future law, such an approach would adequately reflect the principles regarding the role and functioning of consultative bodies as contained in the Commentary of the Advisory Committee on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs.<sup>50</sup> Finally, the Advisory Committee understands that the current draft explicitly foresees the obligation of the authorities of the Autonomous Province of Vojvodina and those of the local government to take into account the opinion of the Council. It finds it important that the law to be adopted includes a clear mandate for the State level Council for National Minorities and that the modalities of its co-operation with the national minority councils are sufficiently articulated.

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<sup>50</sup> Commentary adopted by the Advisory Committee on 27 February 2008.

## b) Outstanding issues

248. Notwithstanding the abovementioned recent positive developments, the Advisory Committee is deeply concerned by the delay in adopting the law on the national minority councils. This is in spite of the recommendation contained in its first Opinion on the then Serbia and Montenegro adopted in 2003 as well as subsequent calls to adopt such a law by other organs of the Council of Europe and international organisations. As a result, the national minority councils which have already been elected have been operating in the absence of clear legal rules regarding their competence and role. In addition, some of these councils have continued working even though their mandate had formally expired. In the Advisory Committee's view, such a situation had the effect of undermining the role of the national minority councils and does not allow for the full and effective implementation of Article 15 of the Framework Convention.

249. The Advisory Committee notes that concerns have been expressed about the draft law regarding the inclusion of a citizenship requirement to be a member of and to participate in the elections of a national minority council. In addition, it appears that the current provisions regarding the electoral registers do not fully reflect the right of persons belonging to a national minority to decide freely to be treated or not to be treated as a national minority. The Advisory Committee refers to its comments under Article 3 above regarding the undue use of a citizenship requirement in the sphere of minority protection. The Advisory Committee considers that, in the present case, such a requirement would be contrary to the aim of effective participation of persons belonging to national minorities in public affairs, and in particular in those affecting them. Furthermore, the Advisory Committee wishes to highlight that any registration of a person's ethnicity should duly respect the right to free self-identification as set out in Article 3 of the Framework Convention and that the provision of the draft law on the special electoral register as well as the relevant practice should fully respect this principle.

### *Recommendation*

250. The Advisory Committee calls on the authorities to ensure that the forthcoming law on the national minority councils provides appropriate guarantees for the councils to take part in decision-making processes in matters affecting them and that they receive adequate support in practice by the respective authorities in order to fulfil their tasks efficiently. The authorities should ensure that the law does not contain any undue requirement which would affect negatively the participation of all persons belonging to national minorities in these councils. They should also ensure that the principle of free self-identification of persons belonging to national minorities is fully guaranteed when registering persons belonging to national minorities in the special electoral roll (see also the comments made under Article 3 above on ethnic data protection).

## **Decentralisation**

### *Findings of the first cycle*

251. In its first Opinion, the Advisory Committee considered that persons belonging to national minorities would benefit from further measures of decentralisation and that this should be taken into consideration in the context of pending constitutional reforms.

### *Present situation*

252. The Advisory Committee is aware of the recent discussions following the adoption of the revised Statute of the Autonomous Province of Vojvodina by the provincial authorities in

October 2008. The Advisory Committee notes that this new Statute has not yet been approved by the Serbian Parliament and that some further discussions are due to take place. Irrespective of the solutions that will be found in this regard, the Advisory Committee is of the opinion that decentralisation processes can play an important role in creating the necessary conditions for the effective participation of persons belonging to national minorities in decision-making. Against this background, the Advisory Committee considers that it is important that representatives of national minorities are adequately involved in the above-mentioned discussions. It also finds that clearly defined competences between the provincial and central authorities would contribute to enhance participation of persons belonging to national minorities in public life.<sup>51</sup>

253. At local level, the Advisory Committee recalls that the 2002 Law on Local Self-Government provides for the setting up of councils for inter-ethnic relations in municipalities with an ethnically mixed population.<sup>52</sup> The responsibilities of these councils include taking initiatives related to the promotion of equality between persons belonging to national minorities and those belonging to the majority and giving opinions on the proposals of the municipal assembly relating to national minorities (Article 63). The Advisory Committee notes however that, according to the information provided by the State Report, such councils have only been established in 23 of the 68 municipalities concerned. It further notes that those municipalities which have established such councils, have experienced difficulties in relation to the selection of the council members and to the functioning of the council. The Advisory Committee acknowledges that the 2002 Law on Local Self-Government gives municipal authorities a margin of appreciation to decide on the composition, scope of activities and procedures of the council for inter-ethnic relations. It considers however that the problems encountered by the municipalities merit careful consideration by the authorities and further guidance in order for these councils to be able to contribute fully to inter-ethnic dialogue at municipal level.

#### *Recommendations*

254. The Advisory Committee encourages the authorities to hold adequate consultation with representatives of national minorities in the context of the on-going discussions of the Statute of Vojvodina. They should also ensure that the future statute clearly defines the respective competences of the central and provincial authorities, including in areas of relevance for national minorities.

255. The Advisory Committee invites the authorities to provide further clarity and guidance regarding the selection process and the modalities relating to the functioning of the councils for inter-ethnic relations at municipal level, so as to ensure that these committees can carry out their tasks effectively.

### **Participation in economic life**

#### *Findings of the first cycle*

256. The Advisory Committee found that persons belonging to the Roma and other national minorities were particularly affected by unemployment and low income. Noting that a large number of persons belonging to the Albanian, Bosniac and Bulgarian minorities were

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<sup>51</sup> See the Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs adopted by the Advisory Committee on 27 February 2008.

<sup>52</sup> Article 63 of the 2002 Law of Local Self-Government defines the ethnically mixed municipalities as those municipalities in which one national community accounts for more than 5% of the total number of inhabitants or all ethnic communities account collectively for more than 10% according to the last census in the Republic of Serbia.

concentrated in areas with particularly severe economic difficulties, the Advisory Committee called on the authorities to pursue and expand the initiatives launched to address this situation.

*Present situation*

a) Positive developments

257. The Advisory Committee appreciates the recent efforts made by the Serbian authorities to promote the economic development of under-developed areas where national minorities live in substantial numbers. This includes the adoption of the Strategy for Long-Term Economic Development for South Serbia in January 2007, with the active participation of the Coordinating Body for the Municipality of Preševo, Bujanovac and Medveđa. The Advisory Committee also takes note of the financing, through the National Investment Fund, of infrastructure projects in North East Serbia as well as in Sandžak.

258. As far as the Roma are concerned, the Advisory Committee refers to its comments under Article 4 above regarding the positive initiatives taken by the National Employment Agency to promote the self-employment of Roma.

b) Outstanding issues

259. The difficulties in the effective participation of some persons belonging to national minorities, especially those living in economically disadvantaged areas, persist. Representatives of persons belonging to national minorities living in North East Serbia highlighted that so far the economic potential of the region has not received all the necessary attention. As far as South Serbia is concerned, the Advisory Committee notes that funding for infrastructure and other economic development projects is based on tenders which should follow the priority identified by the municipal authorities concerned. It encourages the authorities to ensure that representatives of national minorities are given appropriate opportunities to participate in this process and that the resulting distribution of funds adequately meets the needs identified by national minorities.

260. Roma organisations pointed out that although Roma are explicitly referred to as a priority target group in the National Employment Strategy, the specific measures taken so far have not yielded sufficient results in terms of engaging Roma in self-employment projects. Roma persons are still reported to face obstacles in their access to employment, including difficulties in terms of registration in employment services. Furthermore, measures in the field of employment have reportedly lacked clearly defined funding. The Advisory Committee notes with concern that information available indicates that Roma are twice as affected by unemployment than the majority population (51% for the Roma compared to 21% for the majority population), with unemployment rates of Roma women reaching levels as high as 72%.<sup>53</sup> Against this background, the Advisory Committee notes that further measures are needed in the context of the future National Strategy on Roma to tackle the persistent high unemployment of Roma (see also Article 4 above).

*Recommendations*

261. The Advisory Committee calls on the Serbian authorities to pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged

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<sup>53</sup> See the United Nations Development Programme (UNDP) report: “At Risk: Roma and the Displaced in Southeast Europe”, Bratislava, 2006.

areas with the adoption of temporary positive measures and ensure that persons belonging to national minorities are adequately involved in both identifying priority projects to be funded and in their implementation.

262. The Advisory Committee expects that the future National Strategy on Roma will adequately and effectively address the problems identified regarding the access of persons belonging to the Roma minority to employment. The new Strategy should also be allocated adequate funding for its full and effective implementation.

## **Article 18 of the Framework Convention**

### **Bilateral Agreements**

#### *Findings of the first cycle*

263. In its first Opinion, the Advisory Committee welcomed the existing bilateral co-operation agreements relating to the protection of persons belonging to national minorities and supported attempts to sign additional agreements of this nature, including with Croatia.

#### *Present situation*

##### a) Positive developments

264. The Advisory Committee welcomes the fact that agreements with Croatia and “the former Yugoslav Republic of Macedonia” have been concluded since 2004. The Advisory Committee further welcomes the fact that a number of agreements in the field of cultural and educational co-operation have been signed with neighbouring countries.

##### b) Outstanding issues

265. The Advisory Committee notes that, although negotiations are reported to continue, the bilateral commissions envisaged in the bilateral co-operation agreements with Romania and Croatia have not yet been established. The Advisory Committee finds that this type of commission could have a potentially useful role in finding solutions to issues of common concern, including in the field of education (see also Article 12 above) and that due attention should be paid to finding an agreement on their establishment. It further notes that no bilateral agreements devoted to the protection of national minorities have been concluded as yet with Bosnia and Herzegovina and Montenegro and it considers that the adoption of such agreements could be instrumental to enhancing the protection of national minorities. The Advisory Committee further notes that, as far as bilateral co-operation with Montenegro is concerned, the situation of those persons who have presently both Serbian and Montenegrin citizenships is due to be addressed through a bilateral agreement. It notes that such an agreement has not been signed as yet and it expects that a solution can be found. Such a solution should keep in mind the importance of maintaining a climate of co-operation and taking due account of the situation of the persons concerned and their ties with the two countries.

#### *Recommendation*

266. The Advisory Committee encourages the Serbian authorities to step up efforts to conclude bilateral agreements with other neighbouring countries, including Bosnia and Herzegovina and Montenegro as well as to ensure that the conditions are in place for the effective implementation of existing agreements, including by setting up the necessary bilateral joint commissions.

### III. CONCLUDING REMARKS

267. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Serbia.

#### Positive developments

268. Serbian legislative framework contains commendable guarantees regarding the protection of national minorities. This includes a detailed chapter on minority protection in the 2006 Constitution. A new Criminal Code was adopted with some important provisions as regards the prohibition of discrimination. The State level Ombudsman has started his work and is to launch promising initiatives in the field of monitoring national minority protection in all regions of Serbia.

269. Increased possibilities for persons belonging to national minorities to learn their language have been made available, in particular for the Bosnian, Bunjevac, Macedonian and Roma languages in the Province of Vojvodina.

270. Valuable initiatives have been taken by the authorities of the Province of Vojvodina to increase inter-ethnic dialogue.

271. Measures have been taken to increase signposting in minority languages, although some practical difficulties remain.

272. Positive steps have been taken to address the problems faced by Roma in their access to education, health, housing and employment.

273. Serbian public media includes a large and diverse programming in minority languages.

274. There have been welcome measures to increase participation of persons belonging to national minorities in decision-making. The national minority councils which have been established so far have already contributed positively to addressing national minorities' needs, notably in the field of education and culture.

#### Issues of concern

275. Although the recently established Ministry of Human and Minority Rights has shown commitment in pursuing reforms, there have been worrying delays in completing the legislative framework for the protection of national minorities. This relates in particular to the adoption of the law on the national minority councils and a comprehensive legislation on non-discrimination.

276. Measures to increase inter-cultural dialogue have been largely limited to the Province of Vojvodina. A more active role of the central authorities in promoting mutual understanding throughout Serbia is needed.

277. While there are several positive experiences in some municipalities, engagement of local authorities in national minority issues is, on the whole, too limited and lacks continuity. There is a need to ensure a more consistent approach to the use of minority languages in the public

sphere. The legal framework for the participation of national minorities through the councils for inter-ethnic relations at the municipal level lacks clarity.

278. Acts of discrimination and violence against persons belonging to national minorities are still not sufficiently and adequately addressed by the judicial system. There is a need to increase the confidence of persons belonging to national minorities in referring cases alleging discrimination to the existing judicial and non-judicial mechanisms. Recent events have also shown that the approach of the police to inter-ethnic issues is still not satisfactory.

279. Minority language education, although well developed, remains an optional subject in the Serbian educational system. Further measures are needed to address the shortage of teachers and increase the availability of textbooks adapted to the Serbian curriculum. The issue of recognition of diplomas from educational institutions from the region has still not been approached in a comprehensive and satisfactory manner.

280. Persons belonging to the Roma minority still face discrimination in a number of fields, including health, employment and housing and the undue practice of channelling Roma children to “special schools” still continues to be reported.

281. The lack of personal identification documents of many Roma continues to hamper their access to fundamental social rights.

282. There are concerns about the consistency of the legal framework pertaining to minority language media. In addition, the exemption of minority media from the privatisation process has prompted criticism regarding its negative impact on the sustainability of private media outlets and its consequences in terms of media content.

283. The participation of persons belonging to national minorities in decision-making could be made more effective and the numerically smaller minorities given more attention in this context. The representation of persons belonging to national minorities in the law-enforcement structures and the judiciary remains to be further developed. Further information on the representation of persons belonging to national minorities in the public administration is needed in order to obtain a clear view on the situation in this field, while paying due attention to international standards in the field of data protection.

284. The situation of persons belonging to national minorities living in economically disadvantaged areas requires urgent attention and the adoption of temporary positive measures.

## **Recommendations**

285. In addition to the measures to be taken to implement the detailed recommendations contained in sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Complete the pending legislative reforms in the field of national minority councils and the prohibition of discrimination in light of the Advisory Committee's specific recommendations and ensure that conditions are in place for their effective implementation;

- Consolidate the legislative framework regarding minority media in a way that maintains the obligation of the State to provide national minorities with adequate conditions to create and use their own media;
- Ensure that acts of violence and discrimination against persons belonging to national minorities are adequately investigated by law-enforcement bodies and the judiciary, notably by increasing awareness and training measures;
- Expand the measures aimed at promoting tolerance and inter-ethnic dialogue throughout Serbia;
- Expand opportunities for minority language education, including by addressing the needs expressed by the Vlachs and other national minorities and review the current optional character of minority language teaching in consultation with national minority representatives;
- Ensure that legal and practical conditions are such that signposts in minority languages in the areas concerned can be put in place;
- Address the issue of recognition of diplomas from educational institutions from the region in a comprehensive way and take measures to tackle the problems of delay and complexity of procedure which have been identified;
- Ensure that measures to be taken in the context of the future National Strategy on Roma are given adequate support by both central and local authorities in order to eliminate obstacles to the participation of the Roma in employment, housing, health and education;
- Address as a matter of priority, both at legislative and practical level, the lack of personal identification documents of the Roma;
- Pursue further efforts to increase the representation of national minorities in the judiciary and in law-enforcement bodies and take steps to obtain a clear view on the representation of national minorities in the public administration;
- Pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged areas and ensure that their representatives are adequately involved in both identifying priority projects to be funded and in their implementation in the areas concerned;
- Take measures to increase the effectiveness of the councils of inter-ethnic relations at municipal level, *inter alia* by clarifying further their composition and functions.