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

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**Third Opinion on Serbia  
adopted on 28 November 2013**

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**EXECUTIVE SUMMARY**

Serbian legislation includes commendable provisions aimed at promoting the protection of the rights of persons belonging to national minorities, and these have been strengthened in recent years. The 2009 Law on National Councils of National Minorities grants these councils wide-ranging competences in the fields of culture, education, information in national minority languages and official use of language and script, and the 2009 Law on the Prohibition of Discrimination has significantly strengthened the legal framework in place regarding protection from discrimination on grounds relevant to persons belonging to national minorities. Hate motivations are now also a mandatory aggravating circumstance for all ordinary criminal offences.

Public support is provided to a variety of broadcasting and print media; minority languages have been introduced in official use in a number of additional municipalities and settlements, and a broad offer of teaching in and of minority languages is available at pre-school, primary and secondary levels. Several persons belonging to national minorities have been elected to the national parliament and participation of minorities in local administrations appears to be functioning relatively well.

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The authorities have made significant efforts to develop comprehensive policies to promote equal opportunities for the Roma, and welcome steps have been taken to resolve problems in acquiring identity documents. Steps have also been taken in recent years to improve the situation of Roma as regards access to housing, health and education.

However, a comprehensive and strategic approach to the integration of national minorities in Serbian society is still lacking, and inter-ethnic relations in Serbia remain a source of concern. Xenophobia and religious intolerance remain present in Serbian society and racist attacks against persons belonging to national minorities have occurred. Roma are still the objects of prejudice and discrimination and have continued to experience forced evictions, segregation in education and difficulties in access to the labour market and to health care.

There are some concerns about the impact of technological developments on broadcasting in minority languages as well as about the influence of national minority councils on pluralism and editorial independence in minority language media. Progress in introducing minority languages in official use has generally been slower outside Vojvodina, and practical difficulties impede the implementation of this right in practice. A certain number of obstacles, including notably a lack of adequate textbooks, also prevent the greater use by pupils belonging to national minorities of opportunities to receive instruction in and of their minority languages.

A number of flaws in the Law on National Councils of National Minorities, as well as conflicts with provisions of other laws, have led to problems regarding its implementation in practice, which still need to be resolved. National minorities also remain significantly under-represented in state-level public administrations and public enterprises.

#### **Issues for immediate action**

- **ensure that adequate human and financial resources are allocated to achieve the objectives fixed in the Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma 2012-2014 and that local self-government authorities and Roma representatives are directly involved in the evaluation of the implementation of the Strategy; put an end to forced evictions and introduce in domestic law provisions guaranteeing the right to adequate housing and to be free of forced evictions; urgently address access to health care and the overall health situation of the Roma;**
- **eliminate segregation of Roma children in education and devise without delay measures to effectively increase access to mainstream education as well as to improve education outcomes for Roma children;**
- **promote the effective participation of national minorities, including numerically smaller ones, in electoral processes and take vigorous measures to address the under-representation of national minorities in public administration, particularly at state level; pursue efforts to create a multi-ethnic police force;**
- **pursue work towards revising the Law on National Councils of National Minorities, in close consultation with representatives of all national minorities and of civil society, in order to ensure the effective participation of persons belonging to national minorities in all matters concerning them.**

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

**THIRD OPINION ON SERBIA**

1. The Advisory Committee adopted the present Opinion on Serbia 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 14 March 2013, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Bujanovac, Niš, Novi Pazar, Novi Sad, and Belgrade, from 27 to 31 May 2013.
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 monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on Serbia, adopted on 27 November 2003 and 19 March 2009 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 17 November 2004 and 30 March 2011.
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. The Advisory Committee would also like to bring to the attention of States Parties that on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's Opinion and other monitoring documents, aiming at increasing transparency and at sharing the information on the monitoring findings and conclusions with all the parties involved at an early stage (see Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the Protection of National Minorities).

## **I. MAIN FINDINGS**

### **Monitoring process**

6. Serbia has pursued a constructive approach to the monitoring process of the Framework Convention. The Advisory Committee notes with satisfaction that Serbia published the second Opinion soon after its adoption. This Opinion as well as the corresponding Resolution of the Committee of Ministers have been published on the website of the Directorate for Human and Minority Rights and translated into Serbian.

7. As regards the third-cycle State Report, the Advisory Committee notes with satisfaction that it contains detailed information on the legal framework in place as well as information on the latter's implementation in practice. It welcomes the fact that representatives of national minorities were consulted in the preparation of the State Report and that it is available to the public in Serbian on the above-mentioned website.

8. The authorities have also made efforts to raise awareness of the standards of the Framework Convention and other questions related to national minorities amongst employees of local self-government units, through the running in 2010 of targeted workshops in five regional centres, and amongst representatives of national councils of national minorities, inter alia through the running of capacity-building workshops and the publication of manuals on the implementation of human and minority rights at local level.

9. The Advisory Committee regrets that there have again been changes in the level to which responsibilities for minority issues have been allocated within the governmental structure in recent years, with the Ministry for Human and Minority Rights becoming the Office for Human and Minority Rights in 2012.

### **General overview of the implementation of the Framework Convention after three monitoring cycles**

10. Serbian legislation includes commendable provisions aimed at promoting the protection of the rights of persons belonging to national minorities. Since the adoption of the second Opinion of the Advisory Committee, substantial additional steps have been taken in this field, in particular through the enactment or amendment of a wide range of laws pertaining to the rights of persons belonging to national minorities. Important institutional developments have also taken place, notably through the 2010 election of national minority councils for the first time on the basis of the 2009 Law on National Councils of National Minorities and the establishment of the Commission for the Protection of Equality in 2010.

11. The authorities have made significant efforts to develop comprehensive policies to promote equal opportunities for the Roma. However, a comprehensive and strategic approach to the integration of national minorities in Serbian society is still lacking, and inter-ethnic relations in Serbia remain a source of concern. A lack of comprehensive equality data also makes it more difficult to design targeted and effective policies for overcoming discrimination experienced by persons belonging to national minorities.

12. The authorities' consistent stance that they will not interfere in debates concerning the ethnic affiliation of persons belonging to national minorities is welcome, in so far as this reflects a commitment not to arbitrate in disputes about ethnic affiliation or to impose an identity on any

community. However, care must be exercised to ensure that prolonged controversies over identities do not deflect attention from the enjoyment of rights of persons belonging to the national minorities concerned. Pragmatic solutions are also needed to resolve outstanding issues concerning the registration of certain religious organisations that are not among the seven “traditional churches and religious communities” as well as problems in access to worship of persons belonging to national minorities.

13. The concerns of minorities in parts of Serbia that are farthest from the capital are reportedly not always sufficiently visible to the central authorities, meaning that some minorities may lack trust in the central authorities and may tend to feel a stronger sense of connection with their “kin-State”, where one exists, than with Serbia. This situation is at times aggravated by the manner in which bilateral relations are conducted between the relevant states and/or by government policies towards specific national minorities.

14. In addition, discrepancies persist as regards the implementation of minority rights in different parts of the country. In the Autonomous Province of Vojvodina, regulations and practices with respect to support to minority cultures and the use of minority languages are more far-reaching than those in other parts of Serbia where minorities live in substantial numbers, such as southern Serbia (Albanian minority), the Sandžak (Bosniac minority) and eastern Serbia (Bulgarian and Vlach/Romanian minorities). This creates a two-speed system that is experienced as particularly problematic by minorities whose members live mostly outside Vojvodina.

### **Legislative and institutional framework**

15. Serbia has continued to strengthen the legal provisions in place governing the exercise of national minority rights. After considerable delays, the Law on National Councils of National Minorities was enacted in 2009. Overall, the Law sets up a generous system in favour of national minority councils, granting the councils wide-ranging competences in the fields in which national minorities may exercise their constitutional rights of self-government, namely culture, education, information in national minority languages and official use of language and script, as well as establishing electoral procedures for national minority councils and the latter’s funding. However, a number of flaws in the drafting and conception of this Law, as well as conflicts with provisions of other laws, have led to serious problems regarding its implementation in practice, which still need to be resolved.

16. A number of laws (such as the 2010 Law on the Official Use of Language and Script and the 2012 Law on Additions to the Law on Extra-Judicial Proceedings) have been amended to ensure their consistency with legislation governing the protection of national minority rights or ensure that the specific situation of certain national minorities was adequately covered. The Serbian authorities have also enacted welcome new legislation, such as the Law on Permanent and Temporary Residence of Citizens, in the same spirit.

### **Census of 2011**

17. Considerable efforts were made to ensure that the right to free self-identification was fully guaranteed in the context of the 2011 census. The census included entirely open questions about persons’ national affiliation, mother tongue and religious affiliation, with no pre-defined lists, and census enumerators were instructed to record exactly the answers given to these questions. Efforts were also made to ensure that persons belonging to national minorities were included among census enumerators in areas inhabited by substantial numbers of persons

belonging to national minorities. However, following a widely observed boycott of the census by Albanians and reported under-representation of Roma, flexibility will need to be applied in the analysis and processing of the census results with respect to these minorities, particularly as regards the exercise of minority rights based on the number of persons belonging to national minorities living in a given municipality.

### **Equality and non-discrimination**

18. The enactment and entry into force in 2009 of the Law on the Prohibition of Discrimination has significantly strengthened the legal framework in place regarding the promotion of effective equality and protection from discrimination on grounds inter alia of skin colour, citizenship, national affiliation or ethnic origin, language and religious beliefs, although clarifications still appear to be needed as regards the scope of protection provided by the Law in the fields of housing and social protection.

19. The Commissioner for the Protection of Equality, the Ombudsman and Provincial Ombudsman have been active in dealing with cases of violations of the right to equal treatment on the grounds of national affiliation or ethnic origin and violations of rights committed by public authorities against persons belonging to national minorities. However, the actions of the Commissioner are hampered by a lack of sufficient staff, and anti-discrimination legislation is still not sufficiently known or understood amongst the general public. Moreover, it is highly regrettable that the recommendations of the Commissioner for the Protection of Equality, the Ombudsman and Provincial Ombudsman are not always followed up expeditiously by the authorities, meaning that inequalities persist and violations of the rights of persons belonging to national minorities may recur.

### **Situation of the Roma**

20. Welcome steps have been taken to resolve problems in acquiring identity documents and progress has been registered in this field. However, these advances do not automatically lead to the resolution of problems of statelessness or access to social rights. Despite legislative and policy steps taken in recent years to improve the access of Roma to social housing, many Roma still live in substandard conditions and forced evictions still occur. In the field of health, initiatives such as the employment of health mediators have produced positive results, but the overall health situation of the Roma population for the moment remains significantly worse than that of the rest of the population. Segregation in education still occurs, although some progress has been reported towards increasing the primary school attendance rate of Roma children and reducing their number in special schools. The high proportion of Roma that have no profession or professional qualifications also find their access to the labour market severely limited. All of these problems are compounded by prejudice and discriminatory attitudes displayed towards the Roma, which create additional impediments to efforts to improve their situation in practice.

21. The adoption in 2009 of the Strategy for the Improvement of the Status of Roma was followed by an Action Plan for 2009 - 2011. After some delays, an Action Plan for 2012-2014 was adopted in June 2013. Adequate human and financial resources now need to be allocated to the implementation of this Action Plan, along with the introduction of monitoring mechanisms, in order to achieve the objectives fixed.

### **Promotion of national minority cultures**

22. Thanks to the enactment of the 2009 Law on National Councils of National Minorities and the adoption of procedural rules at state and provincial levels for the allocation of public funds to their work, there is now greater clarity in the funding available for minority activities. In addition, the level of funding earmarked for the activities of national minorities has increased. However, the systems for allocating funds reportedly weaken the situation of smaller and more recently recognised minorities. Moreover, the State Fund for National Minorities is still not operative, meaning that decisions of national minority councils may have a disproportionate impact on the manner in which national minorities' cultural activities are supported. In addition, funding provided by the Ministry of Culture to the cultural and artistic activities of national minorities is primarily project-based, which hampers the financing of long-term activities. Some minority representatives also indicate that the criteria for the award of such funds are insufficiently transparent.

### **Tolerance and inter-ethnic relations**

23. Levels of sympathy amongst the population for protecting the language rights of persons belonging to national minorities are relatively high, but xenophobia and religious intolerance are also present, and prejudice against the Roma remains high. Despite a welcome drop in the number of racist incidents reported in the last few years, racist attacks against persons belonging to national minorities and their property continue to occur, including violent attacks against Roma evicted from informal settlements. A worrying series of inter-ethnic incidents also occurred between Serbian and Hungarian youths in Temerin in late 2011 and early 2012.

24. Welcome steps have been taken to strengthen the criminal law arsenal against hate-motivated offences, in particular through the introduction of hate motivations as a mandatory aggravating circumstance for all ordinary criminal offences. This and other relevant provisions of criminal legislation need to be more rigorously applied in order to ensure that hate-based offences are adequately investigated, prosecuted and punished.

25. Welcome initiatives have also been taken to train the police and judiciary on discrimination issues and tolerance, to promote a more multi-ethnic police force in southern Serbia, to promote the learning of minority languages by police officers in some multilingual areas in Vojvodina and to improve communication between the police and particularly marginalised groups. Efforts in these fields need to be both sustained in time and expanded in scope. Occasional reports of police brutality against persons belonging to national minorities also need to be duly investigated and such actions sanctioned.

### **Use of minority languages**

26. Minority languages have been introduced in official use in a number of additional municipalities and settlements since the Advisory Committee's previous Opinion. Progress in this field has however generally been slower outside Vojvodina and practical difficulties such as a lack of staff proficient in the relevant languages and a lack of resources for the translation of official documents continue to be cited as reasons for local authorities' failure to fulfil the obligations laid down by law. Welcome amendments made in 2010 to the Law on the Official Use of Language and Script have removed territorial limitations on the exercise of the right to use names in minority languages and scripts. These provisions now need to be duly applied and the practices of the Office of the Registrar harmonised throughout Serbia in line with these rules.



Topographical indications in minority languages approved by national minority councils also need to be displayed in accordance with the rules set out by the above Law.

## **Education**

27. A broad offer of teaching in and of minority languages is available in Serbia at pre-school, primary and/or secondary levels, depending on the situation of the national minority concerned, which is commendable. However, a certain number of obstacles prevent the greater use of these opportunities by pupils belonging to national minorities, such as a lack of political will to apply the Law at local level in some cases, continued resistance in this respect by some school principals, the organisation of optional mother tongue classes at inconvenient times and in inconvenient locations, and the lack of adequate textbooks.

28. At the level of higher education, the situation regarding the recognition of diplomas issued by institutions in Kosovo\* is reported to be improving. The opening of new faculty branches in southern Serbia, thanks to long-term efforts by the Coordination Body for Preševo, Bujanovac and Medveđa and other involved partners, is also welcome, although some teething problems still remain to be resolved in this area.

## **Access of persons belonging to national minorities to the media**

29. Public support is provided to a variety of print media in minority languages in Vojvodina and a significant amount of broadcasting in minority languages continues to be available across Serbia, with public radio and television broadcasting now available to varying degrees at state, provincial or local level in a total of thirteen minority languages. Representatives of national minorities nonetheless express concerns about the possible impact of privatisation, digitalisation and the mooted abolition of television licence fees on the availability of such broadcasting, and concerns have also been expressed about the extent of pluralism in and editorial independence of media in national minority languages. Mainstream media are for their part reportedly not greatly interested in reporting about the day-to-day concerns of national minorities, and balanced and objective reporting on such issues is lacking.

## **Effective participation in elected bodies and administration**

30. Serbian legislation includes commendable provisions aimed at promoting the representation of national minorities in elected bodies at national, provincial and local levels, and the Law on Political Parties, enacted in 2009, provides that the number of members required to establish a political party of a national minority is lower than that for other political parties. Several persons belonging to national minorities have been elected to the national parliament. However, it remains difficult for smaller national minorities to be represented in parliament and there have been reports of abuses of the lower threshold for the registration of minority political parties.

31. A number of provisions also aim at promoting the adequate representation of national minorities in public administration, and the participation of persons belonging to national minorities in administrative bodies at local level in areas where national minorities live

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\* 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.

compactly appears to be functioning relatively well. However, national minorities remain significantly under-represented in state-level public administrations and public enterprises.

32. Nineteen national minority councils were elected in June 2010, in the first elections held under the 2009 Law on National Councils of National Minorities. Some problems encountered in these elections nonetheless need to be resolved before the next elections are held in 2014. In particular, care needs to be taken to ensure that sensitive personal data on ethnicity is processed only by authorised persons and that applications for enrolment in special electoral registers are lodged in full conformity with the right to free self-identification.

33. Difficulties have also been encountered in the day-to-day application of the Law on National Councils of National Minorities and need to be resolved. Particular care should be taken to remove conflicts between this and other laws; to lay down clear criteria for the transfer of competences to national minority councils; to ensure that all cases where conflicts of interests between two or more national minority councils may arise are regulated on the basis of clear criteria; and to strengthen the legal provisions governing elections to national minority councils and their implementation, so as to ensure full respect for the principle of free self-identification. The establishment in June 2013 of a working group including representatives of all key ministries to draft amendments to this Law is welcome; this process must however be conducted in full consultation with national minorities.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Personal scope of application

##### *Recommendations from the two previous cycles of monitoring*

34. In its previous monitoring cycles, the Advisory Committee invited the authorities to pursue a more flexible approach to the use of the citizenship requirement, by removing this criterion from the general provision on the scope of application of the Law on the Protection of Rights and Freedoms of National Minorities (hereinafter “Law on National Minorities”) and limiting its use to those provisions for which it is relevant. It also called 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 remained unclear.

##### *Present situation*

35. As regards the question of citizenship, the Serbian authorities maintain their previous approach, namely, that the citizenship criterion cannot be removed from the definition of national minorities contained in the Law on National Minorities; however, non-citizens who speak one of the national minority languages used in Serbia can benefit from the same rights as citizens belonging to national minorities, except where a citizenship requirement is expressly laid down by law (for example, in the field of electoral law).

36. The Advisory Committee welcomes the fact that in practice, non-citizens sharing a language with a national minority in Serbia are able to benefit from many of the same rights as persons recognised as belonging to national minorities. It also welcomes the steps taken by the Serbian authorities to facilitate the acquisition of Serbian citizenship by persons who were citizens of the former Socialist Federal Republic of Yugoslavia and who meet the other criteria laid down in the definition of the term “national minority” contained in Article 2 of the Law on National Minorities.<sup>1</sup> However, it notes with concern reports that there have been problems as regards both the contents and the application of new legislation aimed at facilitating birth registration through non-contentious proceedings, which have a direct impact on acquisition of citizenship (see further below, Article 4, Situation of the Roma). The Advisory Committee again underlines the importance of ensuring that persons whose citizenship status has not yet been clarified following the break-up of Yugoslavia and the conflict in Kosovo\* – in particular Roma lacking personal documents – are not negatively impacted by the citizenship criterion. In this context it recalls its general view that citizenship should not be regarded as an element of the definition *per se* but may appropriately be regarded by states as a precondition to access *certain* minority rights.<sup>2</sup>

##### *Recommendations*

37. The Advisory Committee encourages the authorities to continue to apply a flexible approach in practice towards access to minority rights for non-citizens who speak one of the

<sup>1</sup> For a description of these measures, see Third State Report of Serbia, ACFC/SR/III(2013)001 (hereinafter “State Report”), Part II B, item 1.1.1 Defining the term “national minority”.

<sup>2</sup> See also Venice Commission, *Report on Non-citizens and minority rights*, CDL-AD(2007)001, 18 January 2007.

minority languages used in Serbia, and again invites them to consider reviewing the citizenship criterion included in the Law on National Minorities.

38. It recommends that the authorities pursue vigorously their efforts to regularise the situation of persons whose citizenship and/or legal status remains unclear and for whom this may constitute an unnecessary obstacle to their exercise of the rights of national minorities.

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

#### *Recommendations from the two previous cycles of monitoring*

39. In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to continue to strictly abide by the principle of free self-identification contained in Article 3 of the Framework Convention.

#### *Present situation*

40. The Advisory Committee notes that debates about the Bunjevci and Croat identities and the Romanian and Vlach identities are ongoing.<sup>3</sup> It observes that regardless of this context, the right of individuals freely to choose to be treated or not to be treated as belonging to a national minority must be strictly observed, in line with Article 3 of the Framework Convention.

41. The Advisory Committee welcomes the authorities' consistent stance that it will not interfere in debates concerning the ethnic affiliation of persons belonging to national minorities, in so far as this reflects a commitment not to arbitrate in disputes about ethnic affiliation or to impose an identity on any community.<sup>4</sup> It again notes in this context that the authorities have not stood in the way of the creation of the Romanian, Vlach, Croat and Bunjevci national councils, although the last of these was subsequently dissolved (see also Article 15 below).

42. At the same time, it observes that the effect of these prolonged controversies over identities is to allow differences to be instrumentalised for political purposes. This deflects attention from the realisation of the rights of the persons belonging to the national minorities concerned. The Advisory Committee considers that the authorities should seek to support the enjoyment of these rights by promoting constructive dialogue between the groups concerned, in order to allow long-term arrangements to be found that will allow the rights of persons belonging to the relevant national minorities to be protected to the highest possible level.

#### *Recommendations*

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

44. In parallel, it encourages them to take steps – while maintaining strict neutrality as to outcomes – to promote constructive dialogue between persons identifying themselves as belonging to the Romanian and Vlach national minorities, and between persons identifying themselves as belonging to the Croat and Bunjevci national minorities.

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<sup>3</sup> The Advisory Committee has been informed that the President of Serbia declared on 25 November 2013 that Bunjevci should be recognised as a distinct group and that more should be done to preserve their identity.

<sup>4</sup> See State Report, page 39.

## Census

### *Recommendations from the two previous cycles of monitoring*

45. In its previous monitoring cycles, the Advisory Committee encouraged Serbia to ensure that the 2011 census was carried out in a manner that duly respected the right to free self-identification as set out in Article 3 of the Framework Convention and that representatives of national minorities were adequately involved at all stages of the population census.

### *Present situation*

46. The Advisory Committee welcomes the fact that the 2011 census included entirely open questions about persons' national affiliation, mother tongue and religious affiliation, with no pre-defined lists, and census enumerators were instructed to record exactly the answers given to these questions. In accordance with Articles 43 and 47 of the Constitution and Articles 27, paragraph 3 and 30(2) of the Law on the Census of Population, Households and Dwellings 2011, questions on ethnic and religious affiliation were optional and fines could be imposed on enumerators, coordinators, supervisors and other persons involved in conducting the census who required individuals to declare their ethnicity or religion against their will.<sup>5</sup> Census forms were translated into eight minority languages (Albanian, Bulgarian, Hungarian, Macedonian, Romany, Romanian, Ruthenian and Slovakian) under the care of the relevant national minority councils, as well as English, and the methodological guidelines on carrying out the census were also translated into Albanian. The Advisory Committee also welcomes the measures taken by the authorities to ensure that persons belonging to national minorities were employed as enumerators and were represented in local census committees in areas inhabited by national minorities and that Roma participated in these processes,<sup>6</sup> although it has received reports that in some areas where several thousand Roma live, no Roma were included on local census committees or employed as enumerators. It notes in this context that the number of people who declared themselves as Roma increased by more than one-third from the 2002 census to the 2011 census, where 147 604 persons declared themselves to be Roma,<sup>7</sup> although unofficial estimates still place the actual number much higher, at between 250 000 and 500 000.

47. The census provides the authorities with valuable statistical information in areas such as educational attainment, employment and household income, which can play an important role in the development of targeted public policies. The Advisory Committee regrets, however, that, due to a boycott in some areas with a predominantly ethnic Albanian population, the scope of the census was significantly affected in Preševo and Bujanovac, as well as, to a lesser extent, Medveđa.<sup>8</sup> Around 85-90% of Albanians appear to have boycotted the census,<sup>9</sup> in a move that appears to reflect a certain lack of confidence of the Albanian minority in the central authorities' capacity to improve the overall situation of this minority in Serbia (see further below, comments and recommendations under Article 15).

<sup>5</sup> See also the census forms available on the website of the Statistical Office of the Republic of Serbia at <http://media.popis2011.stat.rs/2011/obraci/Popisnica-enleski.pdf>.

<sup>6</sup> See pages 43-44 and 47-49 of the State Report.

<sup>7</sup> 108 193 persons declared themselves as Roma in 2002, compared with 147 604 persons in 2011 (an increase of 36.43%). This amounted to an increase from 1.44% to 2.05% of the overall population of Serbia. See Statistical Office of the Republic of Serbia, 2011 Census of Population, Households and Dwellings in the Republic of Serbia: Population: [Book 1: Ethnicity](#): Data by municipalities and cities, Belgrade 2012.

<sup>8</sup> A call by one Bosniac party for Bosniacs also to boycott the census appears not to have been followed to a significant extent.

<sup>9</sup> 5 809 persons declared their identity as Albanian in the 2011 census, compared with 61 647 in 2002, and 10 040 persons declared Albanian to be their mother tongue in 2011, compared with 63 835 in 2002.

48. In view of the extent of the boycott, the Advisory Committee observes that considerable flexibility may need to be applied in the analysis and processing of the census results with respect in particular to the Preševo, Bujanovac and Medveđa area, especially as regards the exercise of any rights based on the number of persons living in a given municipality. In this respect, the Advisory Committee refers to the importance of additional data collected through independent surveys and research, which may provide crucial complementary information. Such data must of course be collected, processed and stored in full conformity with international and regional data protection standards (see below).

#### *Recommendation*

49. The Advisory Committee calls on the authorities to pursue a flexible approach in the use of data gathered through the census for policy development affecting the rights of persons belonging to national minorities, in particular as regards Roma and in areas where a boycott had a significant impact on the results of the census. It recommends that the authorities maintain a close dialogue with representatives of the Albanian minority to ensure that alternative data sources, including independent research data, are appropriately consulted.

### **Ethnic data protection**

#### *Recommendations from the two previous cycles of monitoring*

50. In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to implement fully the existing domestic legal guarantees regarding the collection and the processing of personal data, including by setting up a specific, independent supervisory body on personal data protection with adequate resources to fulfil its tasks efficiently.

#### *Present situation*

51. The Advisory Committee notes that a single body, the Commissioner for Information of Public Importance and Personal Data Protection, is still responsible for monitoring the implementation of both the Law on the Protection of Personal Data and the Law on Free Access to Information of Public Importance. According to this body, the number of complaints it receives regarding personal data protection is rapidly increasing and is likely to overtake the number of complaints under freedom of information legislation in the coming years.<sup>10</sup> The Advisory Committee notes with concern that no regulations governing the methods and safeguards to be applied to the collection of particularly sensitive data, relating inter alia to individuals' ethnicity, language or religion, have yet been adopted.<sup>11</sup> In addition, while budgetary appropriations allowing for the Commissioner's office to be fully staffed have been approved in the past, the Commissioner was for a long time unable to recruit the necessary staff, reportedly due to a lack of sufficient office space.<sup>12</sup> Although the Advisory Committee has been given to understand that progress has recently been made on the latter issue, it notes that the lack of staff continues to significantly hamper the timely examination of complaints.

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<sup>10</sup> Commissioner for Information of Public Importance and Personal Data Protection, [Summary](#) of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2012, Belgrade, March 2013, page 1.

<sup>11</sup> Article 16, paragraph 5 of the Law on Personal Data Protection; see Commissioner for Information of Public Importance and Personal Data Protection, [Report](#) on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2012, Belgrade, March 2013, p82.

<sup>12</sup> *Ibid*, p28.

*Recommendation*

52. The Advisory Committee calls on the Serbian authorities to issue the necessary implementing regulations to ensure that the existing domestic legal guarantees regarding the collection and processing of sensitive personal data relating in particular to individuals' ethnic affiliation, language and religion are fully operational in practice. It again calls on the authorities to ensure that the Commissioner for Information of Public Importance and Personal Data Protection has all the necessary resources to fulfil his tasks efficiently.

**Article 4 of the Framework Convention****Legislative framework for prohibiting discrimination***Recommendations from the two previous cycles of monitoring*

53. In its previous monitoring cycles, the Advisory Committee invited the authorities to adopt non-discrimination legislation without delay and to take due account of ECRI's General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination in implementing it.

*Present situation*

54. The Advisory Committee welcomes the enactment and entry into force in 2009 of the Law on the Prohibition of Discrimination, and notes with interest that ECRI has since found this Law to be largely in keeping with its General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination.<sup>13</sup> The Advisory Committee notes that the Law prohibits discrimination on a wide variety of grounds including skin colour, citizenship, national affiliation or ethnic origin, language and religious beliefs.<sup>14</sup> It also provides specifically that "[i]t is forbidden to discriminate against national minorities and their members on the grounds of religious affiliation, ethnic origin, religious beliefs and language. The manner of realising and protecting the rights of members of national minorities shall be regulated by a special law."<sup>15</sup> The Advisory Committee regrets, however, that, in contrast with the provisions on the prohibition of discrimination in the field of labour, education and the provision of public services, this Law does not include detailed provisions with respect to discrimination in the areas of housing and social protection. The Advisory Committee observes in this regard that persons belonging to national minorities, who in many cases live in isolated areas that are at a relative socio-economic disadvantage, may be particularly affected by discrimination in these fields (see further below, Situation of the Roma). It is concerned that the lack of clarity of the Law in this regard may both deter individuals from bringing claims of discrimination in the fields of housing and social protection and, if any such claims are brought, result in their dismissal.

55. Article 22, paragraph 2 of the Constitution still grants citizens the right of addressing international institutions for the protection of their rights and freedoms, without expressly granting this right to all persons within the jurisdiction of Serbia. As pointed out in the Advisory Committee's previous Opinion, given that problems remain as regards access to citizenship for some persons belonging to national minorities (see also Article 3 above and further below), this

<sup>13</sup> European Commission against Racism and Intolerance, ECRI Report on Serbia (fourth monitoring cycle), adopted on 23 March 2011, CRI(2011)21, §§19-26.

<sup>14</sup> See Article 2 of the Law for the full (non-exhaustive) list of protected personal characteristics.

<sup>15</sup> See Article 24, Discrimination against national minorities.

provision continues to exclude non-citizens belonging to a minority group from accessing international human rights institutions. There has also been no change to the Criminal Code to eliminate references to “citizens” in areas of relevance for the protection of national minorities.<sup>16</sup>

#### *Recommendations*

56. The Advisory Committee recommends that the authorities take all necessary steps to ensure that the wording of the Law on the Prohibition of Discrimination does not prevent persons from national minorities from bringing claims of discrimination in the fields of housing and social protection, and amend the Law if necessary to achieve this.

57. The Advisory Committee invites the authorities to ensure that all undue citizenship requirements are removed from constitutional and criminal law provisions relevant to the protection of national minorities.

### **Positive measures**

#### *Recommendations from the two previous cycles of monitoring*

58. In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to ensure that the legal provisions relating to the introduction of positive measures were fully in line with the principles contained in Article 4, paragraph 2 of the Framework Convention.

#### *Present situation*

59. The Advisory Committee notes that in accordance with Article 21, paragraph 4 of the 2006 Constitution, “Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.” It also notes with satisfaction Article 14 (Special Measures) of the 2009 Law on the Prohibition of Discrimination, which – in line with this provision of the Constitution – provides as follows: “Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination.”

60. The Advisory Committee again regrets the apparent contradiction of Article 76, paragraph 3 of the Constitution with the above-mentioned provisions, in so far as it appears to lay down more stringent conditions for applying special measures to national minorities than to other groups.<sup>17</sup> It observes that, as long as the courts systematically apply the overarching definitions of special measures contained in Article 21, paragraph 4 of the Constitution and Article 14 of the Law on the Prohibition of Discrimination to all cases where special measures are at issue, including special measures aimed at promoting the equality of persons belonging to national minorities, there will be no particular difficulty in adopting and implementing positive

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<sup>16</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, and Article 146(2) of the Criminal Code, on the unauthorised collection of personal data of *citizens* (emphasis added).

<sup>17</sup> Article 76, paragraph 3 of the Constitution provides that “Specific regulations and provisional measures... for the purpose of achieving full and effective equality among members of a national minority and citizens who belong to the majority shall not be considered discrimination if they are aimed at eliminating *extremely unfavourable living conditions which particularly affect them*” (emphasis added). See also Venice Commission, Opinion on the Constitution of Serbia, CDL-AD(2007)004, §43: “It seems questionable whether only ‘extremely unfavourable living conditions’ may justify positive measures in favour of national minorities which are not to be regarded as discriminatory.”



measures with respect to persons belonging to national minorities where necessary to achieve full and effective equality. In practice, the situation would thus be compatible with Article 4, paragraphs 2 and 3 of the Framework Convention. However, it finds that it would be preferable not to place the burden on the courts to resolve such crucial issues; instead, any possible ambiguity should be removed from the relevant text by aligning the wording of Article 76, paragraph 3 of the Constitution with the wording of Article 21, paragraph 4, which is more clearly in keeping with the spirit of the Framework Convention.

#### *Recommendation*

61. The Advisory Committee recommends that the wording of Article 76, paragraph 3 of the Constitution as regards positive measures with respect to persons belonging to national minorities be aligned both with the spirit of Article 4, paragraphs 2 and 3 of the Framework Convention and with the recognition of special measures in Article 21 of the Constitution.

### **Monitoring discrimination and available remedies**

#### *Recommendations from the two previous cycles of monitoring*

62. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities take the necessary measures to ensure that ombudsmen institutions at all levels were able to perform their tasks efficiently and that they were known and accessible, in particular to persons belonging to national minorities, including in their language. It also called on the authorities to raise awareness amongst the population of their rights and to strengthen confidence amongst persons belonging to national minorities in the possibility of addressing cases of alleged discrimination to the courts.

#### *Present situation*

63. Within the scope of his or her powers to review the operation of public administrative bodies at state level, the Ombudsman (Protector of Citizens) continues to deal with complaints of discrimination committed by such bodies in the exercise of their powers and to issue (non-binding) recommendations, views and opinions in such cases. The Advisory Committee notes with interest that the complaints form is available in all the minority languages used officially in Serbia and that the Ombudsman has carried out outreach work, visiting most local self-government units with a mixed population in the last few years. The number of cases relating to minority rights dealt with by the Ombudsman has risen exponentially over the past years, from 22 complaints handled in 2008 to 221 in 2011<sup>18</sup> and 364 in 2012.<sup>19</sup>

64. The Ombudsman of Vojvodina as well as a number of Ombudsmen at local level<sup>20</sup> also continue to handle cases where individuals complain of violations of their rights by the authorities at the relevant level. The Advisory Committee notes that, since the enactment of the 2009 Law on National Councils of National Minorities, the Provincial Ombudsman has also found that it is competent to examine the actions of National Councils of National Minorities, where these actions are carried out in the exercise of public powers (see further below, comments under Article 15).

<sup>18</sup> See State Report, pages 59-60.

<sup>19</sup> Protector of Citizens 2012 Annual Report, Belgrade, 2013, page 60. 347 of these complaints were submitted by individuals and 17 inquiries opened at the initiative of the Ombudsman.

<sup>20</sup> In Subotica, Novi Sad, Zrenjanin, Šabac, Vranje, Niš, Kragujevac and Belgrade; see State Report, page 62.

65. Following the enactment of the 2009 Law on the Prohibition of Discrimination, the Commissioner for the Protection of Equality was appointed in 2010. In accordance with the Law, the Commissioner is an independent state organ competent to receive and review complaints of violations of the Law on the Prohibition of Discrimination committed by public authorities or private parties (individuals or legal entities), provide information to complainants on legal avenues of redress, bring legal proceedings on behalf of a complainant and issue misdemeanour notices in cases where he or she finds a violation of the Law. He or she is required to establish and maintain co-operation with equality and human rights bodies established at the level of an autonomous province or local government, and to recommend to public administration organs measures aimed at ensuring equality.<sup>21</sup>

66. The Advisory Committee observes that, since her appointment in May 2010, the Commissioner for the Protection of Equality has dealt with a growing number of complaints of discrimination, including on the grounds of national affiliation or ethnic origin. Such complaints accounted for 19 out of 124 complaints received in 2010, 72 out of 349 complaints received in 2011 and 68 out of 465 complaints received in 2012.<sup>22</sup> The Advisory Committee observes nonetheless that citizens remain largely unaware of the legal avenues of redress existing under the Law on the Prohibition of Discrimination,<sup>23</sup> conversely, it has consistently been the case since the Commissioner began working that in the majority of cases lodged on the grounds of national affiliation, no discrimination is found to have occurred, which suggests both that persons belonging to national minorities have the perception that they are less well treated than persons of other ethnic origins and that the notion of discrimination is not yet widely understood in Serbia.<sup>24</sup> The Advisory Committee also notes with concern that the lack of adequate office space reportedly continues to prevent the Commissioner's office from recruiting new staff. Three years after its creation, the office is thus still operating with only one-third of the staff attributed to it according to the relevant decisions of the National Assembly. Despite the active efforts of the Commissioner and her office, this situation severely hampers the effective processing of complaints and the capacity of the institution to carry out the full scope of its statutory tasks.<sup>25</sup>

67. The Advisory Committee notes that the existence and functions of the Commissioner for the Protection of Equality are not yet well known amongst the general public and that additional awareness-raising efforts may be needed to increase the accessibility of this body. The Advisory Committee is also concerned that the Ombudsman, Provincial Ombudsman and Commissioner for the Protection of Equality have all indicated that a number of their recommendations have not been implemented. It emphasises that rapid follow-up to the findings and recommendations of these bodies in the relevant cases is crucial to the achievement of full and effective equality for persons belonging to national minorities.

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<sup>21</sup> See generally Chapter IV of the Law on the Prohibition of Discrimination and Article 33 of the Law as regards the Commissioner's competences.

<sup>22</sup> Commissioner for the Protection of Equality, Regular Annual Report for 2010, Belgrade, March 2011, p52; Regular Annual Report for 2011, Belgrade, March 2012, pp48 and 52; Regular Annual Report for 2012, Belgrade, March 2013, pp53 and 55.

<sup>23</sup> Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, p42.

<sup>24</sup> Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, pp47 and 57; see also Regular Annual Report for 2011, Belgrade, March 2012, p52.

<sup>25</sup> Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, pp15-16 and 18-20.

68. Finally, the Advisory Committee notes that the lack of comprehensive data concerning the overall prevalence of discrimination on the relevant grounds<sup>26</sup> means that it is more difficult both to build up a clear general overview of the situation in practice and to design targeted policies for overcoming discrimination against persons belonging to national minorities.

*Recommendations*

69. The Advisory Committee urges the authorities at all levels to give rapid and complete follow-up to the findings and recommendations of the Ombudsman, Provincial Ombudsman and Commissioner for the Protection of Equality in all cases affecting the rights of persons belonging to national minorities.

70. It urges the authorities rapidly to provide adequate premises to the Commissioner for the Protection of Equality, in order to enable this institution to recruit its full complement of staff and to ensure the efficient handling of complaints received. It again emphasises that the Ombudsman institutions at all levels, as well as the Commissioner for the Protection of Equality, must receive adequate support in order to ensure that they are in a position to perform their tasks efficiently and that they are known to persons belonging to national minorities and accessible to them, including in their languages.

71. The Advisory Committee recommends that the authorities adopt measures aimed at collecting reliable data on discrimination in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the right to free self-identification and in accordance with international standards on personal data protection.

**The situation of the Roma**

*Recommendations from the two previous cycles of monitoring*

72. In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to ensure the sustainability of the national strategy for Roma, allocate adequate human and financial resources to and secure the full involvement of local authorities in its implementation, and carry out regular evaluations of progress achieved, in consultation with Roma representatives. It recommended that the authorities pursue and intensify their efforts to improve the housing and health situation of Roma.

*Present situation*

73. The Advisory Committee acknowledges the efforts made by the Serbian authorities to improve the situation of Roma. In this regard it takes note of the adoption in 2009 of the Strategy for the Improvement of the Status of Roma and of the accompanying Action Plan for the Implementation of the Strategy for the period 2009-2011. The latter included revised action plans in the four priority fields identified in 2005, namely employment, housing, education and health, as well as additional measures concerning the social welfare of internally displaced persons, returnees under the readmission agreement, promotion of the position of women, media, culture and information in the mother tongue as well as discrimination and political participation. The Advisory Committee regrets, however, that the draft action plan for the implementation of the Strategy for the period 2012-2014, drawn up in 2011 by the then Ministry of Human and Minority Rights, Public Administration and Local Self-Government, was not approved by the government prior to the 2012 elections. The Advisory Committee emphasises the importance of defining timely, clear, coherent and targeted action plans, including

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<sup>26</sup> Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, p28.

measurable outcomes and supported by adequate human and financial resources, in order to ensure that the Strategy for the Improvement of the Status of Roma leads to improvements in practice. It notes that work on the 2012-2014 Action Plan was expected to be completed by the Office for Human and Minority Rights set up in 2012 under the new government,<sup>27</sup> in consultation with other relevant authorities, the National Council of the Roma National Minority, Roma NGOs and international organisations, and that the Action Plan was approved by the government on 10 June 2013.<sup>28</sup>

74. The Advisory Committee welcomes the enactment in November 2011 of the Law on Permanent and Temporary Residence of Citizens,<sup>29</sup> allowing citizens who could not register their residence on the basis of a property right (ownership, lease or other legal basis) to register their permanent residence using the address of their local social welfare centre. This was a useful step towards resolving problems faced by persons lacking identity documents, the majority of whom are Roma living in informal settlements, and who are deprived of access to other basic rights that cannot be exercised without the requisite identity documents. However, the Advisory Committee notes with regret that the regulation necessary to implement these new provisions was not adopted until a year later, on 30 November 2012.<sup>30</sup> It is moreover concerned at reports that even now, despite the innovations contained in the above-mentioned Law, there are obstacles to its operation in practice, meaning that persons who cannot demonstrate that they have a place of permanent residence are still unable to obtain identity documents and are thus prevented from exercising other social rights.<sup>31</sup>

75. As regards persons whose birth has not been officially registered (“legally invisible” persons), the Advisory Committee notes with interest the signing of a memorandum of understanding between key national and international actors involved in supporting the Roma in the process of late registration of births. It also welcomes the enactment in August 2012 of the Law on Additions to the Law on Extra-Judicial Proceedings,<sup>32</sup> which establishes a simplified, non-contentious procedure for registering births outside the normal time-limits. However, it is regrettable that this Law expressly provides that the body competent to handle acquisition of citizenship procedures (the Ministry of the Interior) is not bound by the court decision determining the time and date of an individual’s birth in accordance with this Law.<sup>33</sup> This essentially negates the positive effects of the Law as regards overcoming statelessness, since it means that a judicial decision filling in key gaps in an individual’s civil status, which is needed to acquire citizenship and is achieved through the application of this Law, can simply be ignored by the sole body able to grant citizenship. The Advisory Committee is also concerned at reports that restrictive interpretations applied by the Ministry of the Interior regarding the acquisition of citizenship by adults whose birth was not registered in a timely manner may leave these persons in a situation of statelessness even if they have subsequently been able to register their birth through the above-mentioned procedures. It is furthermore concerned that, because a birth can

<sup>27</sup> This is a successor body to the Ministry of Human and Minority Rights, Public Administration and Local Self-Government of the previous government.

<sup>28</sup> The Advisory Committee has not been able to examine in depth the contents of the Action Plan.

<sup>29</sup> Official Gazette No. 87/11. See in particular Article 11, sub-paragraph 2(4) of the Law.

<sup>30</sup> *Pravilnik o obrascu prijave prebivališta na adresi ustanove, odnosno centra za socijalni rad*, Official Gazette No. 113/2012.

<sup>31</sup> Ombudsman (Protector of Citizens) 2012 Annual Report, Belgrade, 2013, page 63; see also Praxis, Social Inclusion of Roma in Serbia – Legally Invisible Persons: Praxis Update on Developments, June 2011-June 2013, pages 1-2 and 3.

<sup>32</sup> Official Gazette No. 85/2012. (Also referred to by some sources as the Law on Amendments to the Law on Non-Contentious Proceedings.) See also Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, page 27.

<sup>33</sup> See Article 71k(2) of the Law on Additions to the Law on Extra-Judicial Proceedings.

only be registered if the child's parents possess the necessary identity documents, the children of "legally invisible" persons are condemned to the same situation themselves.<sup>34</sup>

76. In the field of housing, the Advisory Committee welcomes the enactment of the Law on Social Housing in 2009, and the priority given to socially vulnerable groups, including Roma, when determining the order of allocation of social housing in accordance with this Law,<sup>35</sup> but considers it highly regrettable that Roma without identity papers are unable to benefit from this system. It also notes with interest the adoption in 2012 of the National Strategy for Social Housing and the Action Plan for the implementation of this strategy, including a special measure for the improvement of housing conditions for the residents of substandard settlements (most of which are Roma informal settlements). It notes that the Ministry of the Environment, Mining and Spatial Planning has financed the development of plans for the improvement of living conditions in several informal Roma settlements, with the aim of achieving satisfactory living standards and ultimately the legalisation of these settlements, and that in Vojvodina, substantial sums of public money have been invested since 2009 in improving the living conditions in certain Roma settlements.

77. The Advisory Committee is however deeply concerned that despite these steps forward, many Roma in Serbia still live in substandard living conditions, often in makeshift shacks and lacking access to drinking water, sewerage systems and electricity. There is reportedly no overall vision as to which settlements could be improved and legalised and which ultimately need to be replaced.<sup>36</sup> Forced evictions continue to occur, including before the end of the school year and in bad weather conditions. Nineteen large-scale evictions of Roma reportedly occurred in Belgrade alone between 2009 and mid-2013, in the vast majority of cases without adequate prior consultation with the residents concerned and often at very short notice (less than three days, and sometimes less than 24 hours).<sup>37</sup> Residents' property is destroyed and adequate alternative accommodation is not always found, with municipal authorities placing internally displaced families from Kosovo\* and residents registered in their municipalities in segregated container housing far from the city centre, and leaving persons not registered in their municipality with no accommodation at all.<sup>38</sup> The Advisory Committee notes with particular concern that several of the 257 families evicted from the Belvil settlement in Belgrade in April 2012 were placed on buses to Niš (their registered place of residence) and then housed in a warehouse there, with no running water for three months and no electricity for a further six. The complex legal framework governing evictions combined with the lack of an express constitutional provision guaranteeing the right to adequate housing make it all the more necessary to harmonise domestic law with international standards in this field.

78. In the field of health, the continued support of the authorities to the employment of health mediators is welcome, with mediators employed inter alia to assist with registering Roma for health insurance purposes, vaccinations and ensuring access to health practitioners. The Advisory Committee notes with interest some reports suggesting that amendments aimed at allowing Roma without a registered residence to obtain health cards have been effective,<sup>39</sup> and that it is planned to continue the activities of health mediators as well as awareness-raising

<sup>34</sup> Praxis, Social Inclusion of Roma in Serbia – Legally Invisible Persons: Praxis Update on Developments, June 2011-June 2013, pages 3-4 and 5.

<sup>35</sup> Official Gazette No. 72/2009. On the priority of socially vulnerable groups including Roma, see Article 10.

<sup>36</sup> Praxis, Briefing Note: Exercise of the right to adequate housing for Roma in Serbia, June 2013, p1.

<sup>37</sup> Praxis, Briefing Note: Exercise of the right to adequate housing for Roma in Serbia, June 2013, p1. See also Amnesty International: Serbia: Time for a law against forced evictions, December 2011.

<sup>38</sup> European Roma Rights Centre, Shadow Report to CERD, January 2011 §§12-24.

<sup>39</sup> European Roma Rights Centre, Serbia: Country Profile, 2011-2012, p10, and sources cited therein.

activities for health professionals about the needs of Roma. It is concerned, however, that the overall health situation of Roma remains significantly worse than that of the majority population, with disproportionately high infant mortality rates, reports that many Roma women do not have access to hospitals during childbirth, and persisting difficulties in accessing health insurance despite the progress made in registering Roma for this purpose, referred to above.

79. The Advisory Committee observes that overall, the Roma remain greatly disadvantaged in Serbian society. The problems they face in access to identity documents, adequate housing and health care, as well as in the fields of education and employment (see further below, comments with respect to Articles 12 and 15) are moreover compounded by prejudice and discriminatory attitudes displayed towards them (see below, comments with respect to Article 6), which create additional impediments to efforts to improve their situation in practice.

#### *Recommendations*

80. The Advisory Committee recommends that the authorities ensure that adequate human and financial resources are allocated to achieve the objectives fixed in the Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma 2012-2014. Local self-government authorities and Roma representatives should continue to be directly involved in the evaluation of the implementation of the Strategy and in designing further steps forward in this respect.

81. The authorities should review carefully the impact in practice of the measures so far taken to facilitate registration of residence for persons living in informal settlements and to establish a procedure for the late registration of the birth of “legally invisible” persons. They should in particular take all necessary steps – including amending the relevant legislation or regulations if necessary – to ensure that these measures serve to assist Roma living in informal settlements to obtain the identity documents necessary to exercise other rights, as well as to enable “legally invisible” persons who would otherwise be stateless not only to register their birth but also to acquire citizenship. Judicial decisions on birth registration must also be promptly implemented.

82. The Advisory Committee urges the authorities to put an immediate end to forced evictions and to introduce in domestic law provisions guaranteeing the right to adequate housing and to be free of forced evictions. Where evictions occur, these must be carried out in full conformity with international standards in this field. The authorities should moreover, in consultation with representatives of the Roma, establish a clear overall plan as to which informal settlements should be improved and legalised and which should be vacated while providing adequate alternative housing to their inhabitants.

83. The Advisory Committee strongly encourages the authorities to continue employing health mediators with the aim of improving both access to health care of Roma and their overall health situation, and to pursue their efforts to raise the awareness of health professionals to the needs of Roma.

## Article 5 of the Framework Convention

### Policy of support for minority cultures

#### *Recommendations from the two previous cycles of monitoring*

84. In its previous monitoring cycles, the Advisory Committee urged Serbia to make the State Fund for the National Minorities operative without further delay and ensure that both its composition and functioning adequately involved national minorities. It also recommended that existing funds for the preservation, promotion and development of minorities' culture be made accessible to relevant actors other than the councils of national minorities, in particular NGOs and associations of national minorities.

#### *Present situation*

85. The Law on National Councils of National Minorities, enacted in 2009, grants national minority councils key competences in the area of culture.<sup>40</sup> Combined with the fact that procedural rules for the allocation of public funds to the work of the national minority councils have now been adopted at both state and provincial level,<sup>41</sup> this means that there is now greater clarity in the funding for minority activities. In addition, the level of funding earmarked for the activities of national minorities has reportedly increased.

86. The Advisory Committee welcomes these developments and takes note with interest of the comprehensive information provided by the authorities about funding attributed since 2007 to activities and projects in the field of preservation of national cultures.<sup>42</sup> However, it notes that the systems for allocating funds set up at both state and provincial levels provide that, while 30% of the available funds are divided equally between all the relevant national minority councils, 70% of funds awarded to national minority councils are distributed based partly on the number of persons represented by the national minority council concerned and partly on the number of institutions run by the national minority council.<sup>43</sup> This weakens the situation of numerically smaller and more recently recognised minorities such as the Bunjevci and Macedonians, who had no pre-existing institutions at the time of adoption of these criteria: because their funding remains by definition lower than that of better established minorities, they remain in practice unable to break out of this situation, since they do not have access to public funding in amounts that would enable them to set up their own institutions and receive the concomitant funding. The Association of Jewish Municipalities has also indicated that the nature of its activities as a religious minority association are not adequately taken into account under the system of awarding state funds to national minority councils.

<sup>40</sup> On the 2009 Law on National Councils of National Minorities, see also below, comments with respect to Articles 9, 10, 11, 12, 14 and 15. For a detailed description of the contents of the Law with respect to culture, see State Report, page 78.

<sup>41</sup> Decree on the Allocation of Funds from the Budget of the Republic of Serbia for Financing the Work of National Councils of National Minorities, Official Gazette Nos. 95/2010 and 33/2013; Decision on the Methods and Criteria for Allocating Budgetary Resources of the Provincial Secretariat for Regulations, Administration and National Communities to the National Councils of National Minorities, Official Gazette of the Autonomous Province of Vojvodina, No. 23/2010.

<sup>42</sup> See State Report, pages 89 to 106.

<sup>43</sup> At both State and provincial level, 30% of the relevant funds are divided equally between all national minority councils. The remaining 70% of funds are divided as follows: at state level, half (ie 35% overall) based on the number of persons belonging to the relevant national minority council and the other half (35%) based on the number of institutions run by the council; at provincial level, 30% (ie 21% of the overall amount of provincial funds allocated) based on the number of persons belonging to the relevant national minority council and 70% (ie 49% overall) based on the number of institutions run by the council. See the Regulation and Decision referred to above.

87. Moreover, the Advisory Committee notes with regret that the State Fund for National Minorities is still not operative. This means that the decisions of national minority councils on the management of the funds awarded to them may tend to have a disproportionate impact on the manner in which national minorities' cultural activities are supported. It also means that the activities supported tend to be minority-specific, focusing on a single minority, and rarely include intercultural activities bringing together a number of national minorities and seeking to create transversal dynamics – a trend that is accentuated by the fact that the overarching Council of the Republic of Serbia for National Minorities has not been operating. The Advisory Committee understands that funding that is provided through the Ministry of Culture to the cultural and artistic activities of national minorities is moreover primarily project-based, which according to some interlocutors hampers the financing of long-term activities and precludes covering the material running costs of cultural institutions. Some minority representatives also indicate that the criteria for the award of such funds are insufficiently transparent.

88. Finally, there are still regional inequalities between minorities, in that there are significant discrepancies between the level of support available to minorities whose national minority council is based in Vojvodina (who have access not only to State and local but also to provincial support), and those based in other parts of Serbia, such as the Albanians, Bulgarians and Vlachs (who can only benefit from State and local funding).<sup>44</sup> Other groups such as the Roma remain reliant on support from international donors to ensure continuity for their activities.

#### *Recommendations*

89. The Advisory Committee invites the authorities at State and provincial level to review the system of allocating public funds to national minority councils with a view to ensuring that it enables all national minorities, in particular numerically smaller ones, to benefit fully from the opportunities that such funding may provide.

90. It reiterates its call on the authorities to take the necessary steps to bring the State Fund for National Minorities into operation and ensure that both its composition and functioning adequately involve national minorities. It again recommends that existing funds for the preservation, promotion and development of minorities' cultures be made accessible also 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**

#### *Recommendations from the two previous cycles of monitoring*

91. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities devote particular attention to measures aimed at developing contacts and interactions between the various communities living in Serbia, including in the school context. It also observed that the Serbian authorities should ensure that where Roma living in informal settlements were resettled to other areas, these measures were carried out transparently and in

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<sup>44</sup> See Article 114 of the Law on National Councils of National Minorities and Article 2 of the Decision on the Methods and Criteria for Allocating Budgetary Resources of the Provincial Secretariat for Regulations, Administration and National Communities to the National Councils of National Minorities, Official Gazette of the Autonomous Province of Vojvodina, No. 23/2010.



consultation with both the inhabitants of the areas concerned by the relocation and the Roma population to be resettled.

*Present situation*

92. The overall system of protection of minority rights in Serbia is well developed and there are relatively high levels of sympathy amongst the population for protecting the language rights of persons belonging to national minorities.<sup>45</sup> However, representatives of civil society indicate that for the central authorities not specifically involved in the promotion and protection of minority rights, the concerns of minorities in the outlying parts of Serbia are not particularly visible or important. Minorities are correspondingly described as feeling a stronger sense of connection with their “kin-State”, where one exists, than with Serbia. This situation is at times aggravated by the manner in which bilateral relations are conducted between the relevant states and/or by government policies towards specific national minorities.

93. It is moreover striking that in areas where minorities live compactly – particularly those farthest from the capital and that are in an unfavourable socio-economic situation, such as the Preševo valley and the Sandžak region – minorities express a lack of trust in, and a sense of abandonment by, the central authorities. This is heightened by government policies that are perceived by minorities as inhibiting their expression of their identities, such as the destruction in early 2013 of (illegally built) monuments to Albanian “war heroes” in the Preševo area, prosecutions of persons displaying the national symbols of Albania (even when the Serbian flag was flown alongside), a certain tendency in some circles to portray the Bosniac national minority as “only” a religious community with no other specific identifying characteristics, or the authorities’ intervention as regards the National Council of the Bosniac National Minority (see further below, comments under Article 15).

94. Inter-ethnic relations between individuals in Serbia also remain a significant source of concern to the Advisory Committee; the aftermath of the break-up of Yugoslavia and the bloody conflicts this occasioned have created a strong and regrettably persistent sense of ethnic distance between different national groups. The Advisory Committee notes with concern that xenophobia and religious intolerance remain relatively prevalent; the greatest degrees of ethnic distance are expressed with respect to ethnic Albanians, followed by Croats, Roma and Bosniacs. It is also striking – and worrying – that more than one in five young people reportedly find it acceptable that, in some circumstances, the human rights of certain persons could be denied on the grounds of personal characteristics such as their national affiliation or religion.<sup>46</sup>

95. The Advisory Committee notes that, although they did not constitute a warring side in the conflicts surrounding the break-up of Yugoslavia, prejudice against Roma remains high. More than 60% of racist physical assaults are directed against Roma,<sup>47</sup> and plans to relocate Roma evicted from informal settlements have been met with violent protests (see further below). Roma frequently live separately from the majority society and experience high levels of discrimination in access to employment and other social rights, creating a vicious cycle that can only be broken if measures are taken both to improve access to rights (see above, Article 4) and to change attitudes in society.

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<sup>45</sup> See the poll carried out in late 2012 for the Commissioner for the Protection of Equality by the Centre for Free Elections and Democracy (CeSID) with the support of the UNDP: Citizens’ Attitudes on Discrimination in Serbia, Belgrade, December 2012, p8.

<sup>46</sup> Ibid.

<sup>47</sup> See State Report, p110.

96. The Advisory Committee regrets that at local level, Councils for inter-ethnic relations – which could provide a useful forum in which to develop policies designed to improve inter-ethnic relations with mixed communities – remain underused (see further below, Article 15). However, it notes that these alone cannot overcome the underlying problems related to the sense of distance between minority communities and the State.

*Recommendations*

97. The Advisory Committee recommends that the Serbian authorities intensify their efforts to develop and implement measures aimed at increasing and strengthening contacts and interactions between the various communities living in Serbia. Specific efforts in this regard should be made with respect to the Sandžak and South Serbian regions. Measures to enhance mutual interest in and respect and understanding for each other's culture amongst young people are of particular importance. Better use could also be made of councils for inter-ethnic relations in this context.

98. The Advisory Committee also recommends that the authorities strengthen their efforts to combat prejudice against the Roma in all fields of daily life. It reiterates its call on the authorities to pay particular attention to ensuring that where Roma living in informal settlements are relocated to other areas, this is done in a transparent manner and in consultation with both the Roma population to be resettled and the inhabitants of the areas concerned by the relocation, using mediation wherever necessary.

**Hate crimes and the role of law-enforcement bodies**

*Recommendations from the two previous cycles of monitoring*

99. In its previous monitoring cycles, the Advisory Committee urged Serbia to ensure that its criminal justice system adequately addressed hate crimes targeting persons belonging to national minorities, and to introduce the racist motivation of an offence as an aggravating factor in the criminal law. It also recommended that the Serbian authorities increase their efforts to train the police and the judiciary on discrimination issues and tolerance, ensure that these bodies adequately reflect the ethnic diversity of the population in the region where they operate, and ensure the effective and independent investigation and punishment of police misdemeanours.

*Present situation*

100. The Advisory Committee observes that while the numbers of hate-motivated incidents reported appear overall to have dropped in the last few years (from 354 in 2007 to 242 in 2011), racist attacks against persons belonging to national minorities and their property (including religious property) continue to occur, with Roma frequently the target. Monuments of or honouring individuals belonging to national minorities, such as the monument to Roma singer Šaban Bajramović in Niš, as well as Jewish, Bosniac and Albanian monuments, have also been repeatedly defaced with racist graffiti.

101. The Advisory Committee is deeply concerned that, after a lull of several years, a series of inter-ethnic incidents between Serbian and Hungarian youths, involving physical and verbal assaults, nationalist graffiti and posters and the destruction of religious property, occurred in Temerin in late 2011 and early 2012. It also remains deeply worrying that Roma families who have been resettled following eviction have again been the subject of sustained and violent racist

attacks. These attacks follow on from sometimes violent protests against the decision to settle the families in their new location.<sup>48</sup>

102. Despite the broad arsenal available in the Criminal Code for prosecuting hate-motivated offences,<sup>49</sup> the Advisory Committee is concerned that few prosecutions are brought in practice<sup>50</sup> and, when investigations are carried out, minorities and their representatives indicate that they are frequently slow and ineffective,<sup>51</sup> failing to identify the perpetrators, or that when the latter are found, the offences are prosecuted as minor or less serious offences that expose the perpetrators to less severe sanctions.

103. The Advisory Committee notes with interest that the newly enacted Article 54a of the Criminal Code has recently introduced hate motivations as a mandatory specific aggravating circumstance for all ordinary criminal offences. It notes that, as with the provisions of the Criminal Code that were already in place, it is crucial that this provision be strictly applied in practice in order to ensure that the perpetrators of hate crimes are identified and properly punished. It observes in this context that the Commissioner for the Protection of Equality has repeatedly highlighted the need to strengthen the training on the prosecution of hate-motivated offences provided to judges, prosecutors, the police and other relevant actors in the criminal justice system, and hopes that her recommendations in this regard will be rapidly followed up.

104. Welcome initiatives have been taken to train the police and judiciary on discrimination issues and tolerance, to promote the learning of minority languages by police officers in some multilingual areas in Vojvodina and to improve communication between the police and particularly marginalised groups. Police officers are also supposed to be familiar with the OSCE Recommendations on Policing in Multi-Ethnic Societies.<sup>52</sup> The Advisory Committee is concerned, however, that there continue to be occasional reports of police brutality against persons belonging to national minorities, which moreover are not adequately followed up through disciplinary procedures or in the courts.<sup>53</sup> Such acts are not only clearly in breach of the human rights of the victims but also feed distrust of minorities towards the police, which is compounded by the continued under-representation of national minorities in the police force. While the Advisory Committee has been informed of promising results from specific projects conducted to increase the representation of national minorities in the police forces in South Serbia as well as, in 2012, in Novi Pazar and Prijepolje, efforts in this field need to be both sustained in time and expanded in scope.

#### *Recommendations*

105. The Advisory Committee strongly urges the Serbian authorities to ensure that the criminal justice system adequately addresses hate crimes, by preventing, thoroughly

<sup>48</sup> See notably the September 2013 attack against Roma families living in the container settlement of Resnik after their eviction from Belvil, as well as the incidents reported by the Ombudsman, Comments on specific issues in respect of the laws and regulations governing the status of national minorities, in response to the application of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Belgrade, February 2011, pp9-10 and the ERRC, Serbia: Country Profile 2011-2012, pp24-26.

<sup>49</sup> See Articles 128, 129, 130, 131, 174, 317 and 387 of the Criminal Code.

<sup>50</sup> Ombudsman, Comments on specific issues in respect of the laws and regulations governing the status of national minorities, in response to the application of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), Belgrade, February 2011, p10.

<sup>51</sup> The Jewish community in particular has signalled a series of long-running cases in which they filed charges against the authors of anti-Semitic statements and works and in which the proceedings are yet to be completed – including one case brought in 1991 and another in 2002.

<sup>52</sup> See State Report, pages 130-132.

<sup>53</sup> See notably the ERRC, Serbia: Country Profile 2011-2012, p25.

investigating and prosecuting acts of violence targeting persons belonging to national minorities. It recommends that the Serbian authorities intensify their efforts to raise the awareness of the police, prosecutors and the judiciary as to the importance of prosecuting hate-motivated offences as such and that they strengthen the measures in place to train all relevant actors of the criminal justice system so as to ensure that this is done in practice.

106. The Advisory Committee strongly encourages the authorities to pursue and expand their efforts aimed at ensuring that police forces adequately reflect the ethnic diversity of the population in the region where they operate.

107. It recommends that an effective and independent supervisory mechanism be established to handle complaints of police misconduct and to ensure that established cases of misconduct and human rights abuse by the police against persons belonging to national minorities are adequately punished.

### **Media coverage of persons belonging to national minorities and issues relevant to them**

#### *Recommendations from the two previous cycles of monitoring*

108. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities pay increased attention to initiatives promoting balanced and objective reporting on minority issues. It also recommended that the authorities strengthen both the composition and the monitoring work of the Council of the Republic Broadcasting Agency.

#### *Present situation*

109. It is consistently reported by civil society that the media are largely under the control of, or at best are strongly influenced by, political parties, which is a significant impediment to balanced and objective reporting on all subjects, including issues related to national minorities. The latter report that it is difficult to interest mainstream media in the day-to-day concerns of persons belonging to national minorities, and that only sensational events such as anti-Semitic acts or offences committed against persons belonging to national minorities tend to be reported, and then in a less than satisfactory manner. It is also reported that there is an overall tendency in the media to portray minorities as mere folklore. While some welcome examples of multicultural programming exist, notably in Vojvodina, examples of negative media stereotyping against Roma have also been cited,<sup>54</sup> and the Advisory Committee has received reports of misleading media coverage of events in the Sandžak that fuels intolerance between the majority and minority communities.

110. The Advisory Committee notes that in accordance with the Broadcasting Law, one of the nine members of the Council of the Republic Broadcasting Agency (RBA Council) – which is responsible for all decision-making of the Agency – is designated, by mutual agreement, by NGOs and civil society organisations focusing on protection of freedom of expression and/or of the rights of national and ethnic minorities and/or of the rights of the child.<sup>55</sup> Although the

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<sup>54</sup> See, for example, a 2012 case in which a newspaper article equated Roma with thieves and another in which the national public broadcaster broadcast anti-Roma statements by an inhabitant of a building in which a Roma family was about to move in; Commissioner for the Protection of Equality, Regular Annual Report for 2012, pages 71 and 79.

<sup>55</sup> Seven of the eight other members are designated, respectively, by the relevant Parliamentary Committee; the Assembly of the Autonomous Province of Vojvodina; the Serbian Government; the Executive Council of Vojvodina; the University Conference; Associations of broadcasting professionals and film and drama artists and composers, by mutual agreement; and traditional churches and religious communities. The ninth member of the

interests of these groups represented do not necessarily coincide, no mechanisms are specified in the Law for selecting the organisations expected to reach agreement on this appointment or the manner in which they are expected to do this. The authorities have indicated that such a member was elected on 11 December 2009 for a term of six years, and the Advisory Committee has received no complaints regarding the functioning of the Agency or the RBA Council in the field of preventing or sanctioning programmes inciting discrimination, hatred or violence on ethnic or related grounds. The Advisory Committee also notes that the Council has reportedly observed no violations relating to inciting discrimination or hate speech against persons belonging to national minorities in the programmes of national and regional broadcasters that it has supervised.<sup>56</sup> However, this contrasts strongly with the experience of the media as described by representatives of national minorities and creates doubts as to the Council's effectiveness as a mechanism for preventing and punishing hate speech through the media.

### *Recommendations*

111. The Advisory Committee again calls on the authorities, whilst fully respecting and actively promoting the editorial independence of the media, to take measures to encourage both national and provincial/regional media outlets to develop programmes aimed at promoting tolerance and inter-cultural understanding.

112. Vocational training of journalists and other media professionals should receive greater attention, in particular so as to improve media reporting on minority issues. The authorities should support initiatives designed to encourage balanced and objective reporting. The monitoring work of the RBA Council should be strengthened and the authorities should review the manner in which its members are designated with a view to ensuring that national minority perspectives are adequately represented.

## **Displaced persons**

### *Recommendations from the two previous cycles of monitoring*

113. In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to adopt a comprehensive strategy for dealing with refugees and internally displaced persons and ensure that adequate means were allocated to its implementation. It indicated that such a strategy should aim at finding durable solutions for these persons, including local integration, and address their lack of personal documentation as a matter of priority.

### *Present situation*

114. The Advisory Committee notes that around 210 000 internally displaced persons having fled Kosovo\* in 1999 are still living in Serbia, of whom more than 10% are Roma;<sup>57</sup> overall, approximately one in five displaced persons is reported to belong to a minority.<sup>58</sup> An estimated additional 15 000 to 20 000 Roma have been unable to register as displaced persons due to a lack of documentation and/or lack of access to the relevant procedures,<sup>59</sup> and are thus in an even more vulnerable position. Against this background, the Advisory Committee welcomes the adoption in early 2011 of the National Strategy on Resolving Issues of Refugees and Internally

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Council is appointed by (a majority of at least five of) the eight members designated as described above, and must live and work in Kosovo\*.

<sup>56</sup> See State Report, p112.

<sup>57</sup> See State Report, p113.

<sup>58</sup> See Internal Displacement Monitoring Centre, Serbia: Integration Stalled, 12 March 2013, p1.

<sup>59</sup> See Internal Displacement Monitoring Centre, Serbia: Integration Stalled, 12 March 2013, p5.

Displaced Persons for the period 2011-2014, and notes that it has a particular focus on resolving the housing needs of the most vulnerable categories. It also notes that the Commissioner for Refugees continues to work with international organisations, the Ministry of Labour and Social Policy and local self-governments to provide housing solutions for displaced persons and to promote the adoption of local action plans for the improvement of the status of refugees and displaced persons.

115. The Advisory Committee observes that many displaced persons still lack documentation, which severely impedes their access to social rights (see above, comments with respect to Article 4). Despite the commendable efforts of the authorities to improve the housing situation of displaced persons, the Advisory Committee is concerned that many displaced persons, notably Roma, continue to live in substandard housing conditions, and that they remain vulnerable to forced evictions. The Advisory Committee stresses the importance of identifying and implementing durable solutions for displaced persons in Serbia, including beyond 2014, and notes that the very low rate of returns to Kosovo\* makes this all the more urgent.

#### *Recommendation*

116. The Advisory Committee strongly encourages the authorities to pursue the implementation of the National Strategy on Resolving Issues of Refugees and Internally Displaced Persons and to ensure that adequate means are allocated to its implementation, including beyond 2014. It emphasises the need to find durable solutions for these persons, including local integration, and to address their lack of personal documentation as a matter of priority.

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

#### **Freedom of religion**

#### *Recommendations from the two previous cycles of monitoring*

117. In its previous monitoring cycles, the Advisory Committee urged the authorities to ensure that the right of persons belonging to a national minority to establish religious institutions, organisations and associations was fully guaranteed both in legislation and in its implementation. It also called on the Serbian authorities to ensure that there was no unjustified limitation on the right of persons belonging to national minorities to practice their religion.

#### *Present situation*

118. The Advisory Committee regrets that no changes have been made since its previous Opinion to the 2006 Law on Churches and Religious Communities, despite widespread criticism of certain of its provisions by both domestic and international actors.<sup>60</sup> None of the recommendations of the Ombudsman aimed at improving the legal position of churches and religious communities as well as ensuring legal certainty have been followed up. Moreover, on 16 January 2013, the Constitutional Court rejected a request for the assessment of the constitutionality of a number of provisions of the above Law.<sup>61</sup>

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<sup>60</sup> See inter alia Opinion 16-1211/09 of the Ombudsman Concerning the Need for Improving the Legislative Position of Churches and Religious Communities and Exercising the Freedom of Religion Through Improving the Regulations and Their More Accurate Application; Commissioner for the Protection of Equality, Regular Annual Report for 2012, p132; and the analysis of ECRI, Report on Serbia (fourth monitoring cycle), CRI(2011)21, §§7-10.

<sup>61</sup> Decision IUz-455/2011, published in Official Gazette No. 23/2013.

119. The Advisory Committee recalls the concerns already raised in its previous Opinion regarding the need for religious organisations that are not among the seven “traditional churches and religious communities”<sup>62</sup> and that wish to benefit from certain rights, such as the right to acquire legal personality or to construct religious buildings, to re-register following a procedure requiring them to submit the names and signatures of at least 100 members of the organisation,<sup>63</sup> and notes that there have been no significant developments in this regard. It remains concerned that this situation may raise issues of compatibility with 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.

120. It further observes that the Montenegrin Orthodox Church has still not been able to register, essentially on the grounds that, under Orthodox canon law, territorial overlapping between dioceses has to be avoided. It also notes that, again due to issues relating to the (absence of a) right of the Romanian Orthodox church to operate in certain parts of Serbian territory, persons belonging to the Vlach/Romanian minority/minorities do not always have access to worship in the language of their choice. It further notes that members of the Bulgarian national minority have also requested access to worship in their mother tongue.

121. The Advisory Committee acknowledges that there are complex issues of Orthodox canon law at stake in this area and that the constitutional principle of separation between the State and religion makes interference by the authorities in such matters exceptionally sensitive. However, it notes that in practice, the absence of action by the state authorities in this field may ultimately give rise to issues of compatibility with international standards on freedom of religion. The Advisory Committee observes that pragmatic solutions could be found and could go a significant way towards meeting the demands of the national minorities concerned regarding adequate conditions for worship.

#### *Recommendations*

122. The Advisory Committee again urges the authorities to ensure that the right of persons belonging to a national minority to establish religious institutions, organisations and associations is fully guaranteed in both legislation and its implementation. It recommends that they implement without further delay the recommendations of the Ombudsman and the Commissioner for the Protection of Equality in this regard.

123. It further recommends that the authorities take active steps – while respecting the principle of separation between the State and religion – to promote the finding of pragmatic solutions in all cases where these could help resolve difficulties in access of persons belonging to national minorities to worship in their mother tongue.

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<sup>62</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 Religious Community and Jewish Religious Community.

<sup>63</sup> See the Advisory Committee’s Second Opinion on Serbia, §142.

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

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

#### *Recommendations from the two previous cycles of monitoring*

124. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities ensure that the legal framework relating to minority media was coherent and consistent with the need to ensure plurality and the adequate coverage of minority issues, and that national minority councils be consulted in this field.

#### *Present situation*

125. The Advisory Committee notes that since its previous Opinion, the competences of national minority councils in the field of media have been set out in the Law on National Councils of National Minorities. In addition, the goals of the State as regards privatisation of media have been set out in the Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, adopted in 2011. Harmonisation of the laws in this field was due to be completed within 18 months but is still ongoing. At provincial level, the 2009 Law on Establishing Competences of the Autonomous Province of Vojvodina defines the latter's competences in matters related to public information.

126. While proposals to amend media laws being drawn up as part of the media privatisation process – aiming at the privatisation of local rather than state-level or provincial media services – may provide a valuable opportunity to define the notion of public interest in this field and include provisions on information in national minority languages and intercultural broadcasting, representatives of national minorities have also expressed considerable concerns in this context. In particular, proposals to abolish television licence fees and to require media outlets to bid for public funding in future are seen by some as a serious threat to the independence of the media; there are also concerns that reduced funding at local level may threaten the continued existence of some minority media. It has moreover been pointed out that in the case of numerically smaller minorities that are dispersed across various parts of the territory, such as Ukrainians and Macedonians, few private media companies would consider it commercially viable to broadcast in their languages and existing programmes may therefore be lost as a direct result of the privatisation process.

127. The Advisory Committee observes that minority media are reliant on external support for their survival. In consequence, local authorities and national minority councils often directly fund the media outlets that they own. A number of questions regarding editorial and political independence as well as respect for pluralism in minority media may arise as a result. Confusion may moreover easily arise as national minority councils are elected bodies but appear essentially to act as private media owners when exercising founders' rights.

#### *Recommendation*

128. The Advisory Committee recommends that national minority councils be closely consulted in the process of drawing up and enacting legislation governing media privatisation. Particular care should be taken to ensure that this process does not lead to a reduction in the offer of broadcasting in minority languages, especially where there may be issues of commercial viability of such broadcasting. Questions surrounding the role of national minority councils with respect to the media also need to be resolved, in full consultation with these councils as well as with media outlets and associations themselves.



## **Access to media of persons belonging to national minorities**

### *Recommendations from the two previous cycles of monitoring*

129. In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to take measures to facilitate access of national minorities to broadcasting licences both at regional and local levels and to promote the development of professional training, including vocational training of journalists belonging to national minorities.

### *Present situation*

130. A significant amount of broadcasting in minority languages continues to be available in Serbia, with public radio and television broadcasting now available in nine minority languages in Vojvodina (an increase in the number of languages covered since the Advisory Committee's previous Opinion)<sup>64</sup> and several weekly programmes in Romani on the national broadcaster. Furthermore, local community and other broadcasters provide radio and/or television broadcasting in three additional minority languages.<sup>65</sup> Public broadcasting services in minority languages nonetheless face a number of significant challenges, including difficulties in recruiting staff on long-term contracts and a lack of trained journalists in the relevant languages. The introduction of broadcasting in more minority languages on a single radio station in Vojvodina has also meant that there has been a reduction in the number of hours of broadcasting in the minority languages that were already offered.

131. According to the information provided by the authorities, 139 radio and 33 television licences for broadcasting national minority languages were issued between 2006 and 2012. The switchover to digital television, which is still being prepared, should increase the opportunities for providing more channels at national level, which may be of interest to minorities that are dispersed rather than compactly settled. However, fewer channels will be available at local level. This may adversely affect broadcasting in minority languages for minorities that are mostly concentrated in a small number of municipalities.

132. As regards print media, the Advisory Committee welcomes the fact that public support is provided to a wide variety of media in minority languages in Vojvodina. Outside Vojvodina, however, financial support for minority language print media is no longer provided on a regular footing but depends on sporadic grants made in the context of open competitions of the Ministry of Culture. This has negatively affected publishing in minority languages, notably in the case of Bulgarian.<sup>66</sup>

133. The Advisory Committee recalls the important role played by both print media and broadcasting media in ensuring that persons belonging to national minorities are able to exercise in practice their right to information and underlines that public support plays a crucial part in the realisation of this right.

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<sup>64</sup> One public radio station in Vojvodina broadcasts 24 hours per day in Serbian, one in Hungarian and a third one in eight other minority languages: Romanian, Ruthenian, Slovakian, Romany, Ukrainian, Bunjevci, Macedonian and, since 2011, Ashkali. There are also public television broadcasts in nine minority languages in Vojvodina, with daily programmes in Croatian (since 2010), Hungarian, Romanian, Romany, Ruthenian and Slovakian and weekly programmes in Bunjevci, Macedonian and Ukrainian.

<sup>65</sup> Albanian, Bosniac and Vlach.

<sup>66</sup> See Recommendation no. 16-549/09 of the Ombudsman, with regard to the Bratstvo publishing company.

### *Recommendations*

134. The Advisory Committee again encourages the Serbian authorities to promote the development of professional training, including vocational training, of journalists belonging to national minorities. It also encourages the authorities, notably at state level, to take into account the need for sufficient and stable funding to guarantee the viability of media in minority languages, as an integral part of ensuring access to information for persons belonging to national minorities, in particular outside Vojvodina.

135. The Advisory Committee recommends that the impact of the introduction of digital television broadcasting on minority media be carefully reviewed, in full consultation with national minority councils. The increased opportunities for reaching dispersed minorities should be fully exploited while at the same time taking all necessary measures to preserve broadcasting at local level for national minorities concentrated in certain parts of the territory.

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

### **Use of minority language in relations with authorities at local level**

#### *Recommendations from the two previous cycles of monitoring*

136. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities 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.

#### *Present situation*

137. The Advisory Committee welcomes the amendments introduced in 2010 in the Law on the Official Use of Language and Script in order to ensure consistency between this Law and the Law on National Councils of National Minorities.<sup>67</sup> It also welcomes the introduction of minority languages in official use (alongside the Serbian language in Cyrillic script, in use throughout Serbia) in a number of additional municipalities or settlements within a municipality since its second Opinion. It notes with interest in this context that the possibility that exists in Vojvodina of introducing a minority language in official use in certain settlements where minorities live compactly within a municipality, even where the 15% criterion for the obligatory introduction of the language in official use throughout the entire municipal area is not met,<sup>68</sup> has been used to expand the possibilities for using minority languages in contacts with local authorities in Vojvodina. At the same time, it is welcome that the municipality of Vršac, which had previously reduced the official use of Hungarian and Romanian to certain settlements within its territory, has re-established the official use of these languages throughout its territory.<sup>69</sup>

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<sup>67</sup> Law amending the Law on Official Use of Language and Script, Official Gazette no. 30/2010.

<sup>68</sup> In accordance with Article 11, paragraph 2 of the Law, a municipality is under an obligation to introduce a minority language as a language in official use wherever the results of the last census show that persons belonging to the national minority concerned constitute at least 15% of the population of that municipality.

<sup>69</sup> Since the Advisory Committee's Second Opinion on Serbia, Bosnian has been introduced as an official language in Prijepolje; Bulgarian in the settlement of Ivanovo; Croatian in the settlements of Bački Breg, Bački Monoštor, Sot and Batrovci; Hungarian throughout the local self-government unit of Vršac (instead of only in parts), as well as in Ivanovo and Vojlovica; Macedonian in the settlements of Jabuka and Dužine; Montenegrin in Mali Idoš; and Romanian throughout the local self-government unit of Vršac (instead of only in parts), as well as in Banatsko Novo Selo. This is in addition to the municipalities and settlements in which Albanian, Bosnian, Bulgarian,

138. Nonetheless, the Advisory Committee observes that the implementation of the right to use minority languages in contacts with authorities at local level remains uneven across Serbia. Progress in introducing minority languages as languages in official use remains generally slower outside Vojvodina, where a more flexible approach is taken. While it is highly welcome that Bosnian has now been introduced as an official language in Prijepolje, the Advisory Committee notes with concern that the municipality of Priboj has refused to introduce Bosnian in official use, although the legal requirements were met,<sup>70</sup> and in spite of a recommendation by the Ombudsman that the municipality take the necessary steps to enable the exercise of the right to official use of the Bosnian language and script<sup>71</sup> as well as the introduction by the Ministry of Human and Minority Rights of proceedings to investigate the constitutionality and legality of this situation.<sup>72</sup> Similar difficulties have been reported in eastern Serbia, for example as regards the introduction of Vlach as an official language in Bor, a case which is complicated by the ongoing disputes as to whether a distinct Vlach identity and language exist.

139. The Advisory Committee observes that where a minority language is in official use, lack of staff proficient in the relevant languages and/or a lack of resources for the translation of official documents are reportedly cited by the local authorities as reasons for not fulfilling the obligations laid down by law. The reform of the judicial system in 2010, which led to smaller local courts being closed and transferred to larger urban centres, has also aggravated difficulties in access to justice in national minority languages, notably in municipalities in southern Serbia where Albanian is in official use, although this is provided for under the Law on Official Use of Language and Script.<sup>73</sup> The Advisory Committee notes with interest in this context that reforms of the court network are under way and observes that the needs of persons belonging to national minorities should be fully taken into account in all such reforms. Representatives of national minorities also indicate that many persons belonging to national minorities do not exercise their rights in this field because they are unaware of them.

#### *Recommendations*

140. The Advisory Committee urges the Serbian authorities to ensure that the legal provisions governing the use of minority languages in contacts with authorities at local level are fully implemented without further delay. It encourages them to promote a flexible application of the 15% threshold for bringing minority languages into official use at the local level, bearing in mind also that it is sufficient under the Framework Convention as well as under domestic law that an area be traditionally inhabited by persons belonging to a national minority.

141. The Advisory Committee also recommends that the authorities take steps to promote the recruitment of civil servants at local level who are proficient in the relevant languages, and recommends that the authorities make all the necessary resources available, and increase awareness, to ensure that persons belonging to national minorities can effectively exercise their rights in this field.

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Croatian, Czech, Hungarian, Macedonian, Montenegrin, Romanian, Ruthenian and Slovakian were already in official use. See State Report pp221-223.

<sup>70</sup> In addition to the above-mentioned obligation to introduce a minority language as a language in official use wherever the results of the last census show that persons belonging to the national minority concerned constitute at least 15% of the population of that municipality, Article 11, paragraph 1 of the Law provides that the language and script of national minorities may be in equal official use within the territories of local self-government units that are traditionally inhabited by persons belonging to national minorities.

<sup>71</sup> Recommendation No. 16-1566/09 of 31 March 2010.

<sup>72</sup> See State Report p230.

<sup>73</sup> See Article 11, paragraph 3 of the Law.

## Article 11 of the Framework Convention

### Names and surnames in minority languages

#### *Recommendations from the two previous cycles of monitoring*

142. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities ensure that the legal regulations governing the right to use personal names in minority languages and their official recognition were interpreted in conformity with Article 11 of the Framework Convention, notably by removing any territorial limitations to the exercise of this right, adopting harmonised procedures and training registry officers.

#### *Present situation*

143. The Advisory Committee welcomes the fact that following the amendment of the Law on Official Use of Language and Script in 2010, there is by law no longer a territorial limitation on the exercise of the right to use personal names in minority languages: personal names in the language and script of national minorities are entered both in the civil registers of local self-government units where the language and script of the national minority are in official use and in all civil registers kept in the territory of the Republic of Serbia.

144. The Advisory Committee regrets, however, that problems with the exercise of this right continue to arise in practice. It has been reported that some offices of the Registrar of births, marriages and deaths fail to make available adequate information to persons belonging to national minorities about the possibilities of registering names in their language and script, and that the possibility of registering a name in a minority language subsequent to the original birth registration is not applied uniformly throughout Serbia, creating uncertainty and inequality between citizens.<sup>74</sup> Representatives of national minorities have also indicated that in practice – despite the fact that the law no longer contains any territorial limitations – it is still only possible to obtain identity documents in their minority language in municipalities where this language is in official use. Moreover, they report that names in minority languages containing letters that do not exist in Cyrillic are deformed when transcribed into Cyrillic script, which is particularly problematic for persons who have not been able to obtain documents in their mother tongue.

145. The Advisory Committee recalls that the right to use one's personal name in a minority language and have it officially recognised is a core linguistic right, linked closely to personal identity and dignity. This means it is particularly important that States Parties ensure that individuals are free from obstacles on the use and recognition of their names in their own language.<sup>75</sup>

#### *Recommendation*

146. The Advisory Committee recommends that the Serbian authorities intensify their efforts to train officers of the Registry of Births, Deaths and Marriages as to the contents and proper application of the rules currently applicable in this field and to ensure that full information is available to persons belonging to national minorities on the procedures for registering names in minority languages.

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<sup>74</sup> Belgrade Centre for Human Rights, *Realisation of Rights of National Minorities*. Belgrade, 2013, pp52-59.

<sup>75</sup> See further the Advisory Committee's Thematic Commentary No. 3, *The Language Rights of Persons Belonging to National Minorities under the Framework Convention*, May 2012, paragraphs 61-63.

## **Topographical signs**

### *Recommendations from the two previous cycles of monitoring*

147. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities, in consultation with the relevant national councils of national minorities, monitor the implementation of the legal guarantees concerning the display of traditional place names and topographical signs in minority languages and ensure that they were consistently implemented throughout Serbia.

### *Present situation*

148. The Advisory Committee recalls that in accordance with Article 11 of the Law on National Minorities, the names of bodies exercising public authority, local names, street names and other topographical indications shall also be displayed in minority languages in places where these are in official use. Under Article 22 of the Law on National Councils of National Minorities, it falls to the national minority councils concerned to establish the traditional names and other topographical indications in their minority language and propose the adoption of the relevant names by the local authorities. The Advisory Committee notes with interest that since its previous Opinion, the Albanian, Bosniac and Croatian national minority councils have established lists of toponyms in these minority languages and the Hungarian, Romanian and Slovak national minority councils have supplemented the already existing lists of toponyms in these languages.<sup>76</sup>

149. While in some places these provisions have been well implemented, it is regrettable that cases continue to be reported in which the names established by national minority councils are not displayed in accordance with the above rules – in some cases, despite the issuing of a recommendation by the Ombudsman or the Commissioner for the Protection of Equality to this effect. Arguments of a lack of financial resources carry little weight in this context given that several years have passed since many of the determinations of names were made.<sup>77</sup> The Advisory Committee moreover emphasises the importance of promoting bilingualism in signposts as a means of conveying the message that a given territory is shared in harmony by various population groups.

### *Recommendation*

150. The Advisory Committee recommends that the authorities take the necessary measures to ensure that all local authorities where a minority language or languages are in official use comply with their obligation to display topographical indications in the relevant minority language or languages.

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<sup>76</sup> See State Report, pp235-242.

<sup>77</sup> See inter alia Ombudsman, 2012 Annual Report, Belgrade, 2013, p65; Belgrade Centre for Human Rights, Realisation of Rights of National Minorities, Belgrade, 2013, pp42-49.

## Article 12 of the Framework Convention

### Teacher training and textbooks

#### *Recommendations from the two previous cycles of monitoring*

151. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities take additional measures to ensure that teacher training and textbooks adequately reflected the needs expressed by national minorities.

#### *Present situation*

152. The Advisory Committee notes with interest the enactment in 2009 of the Law on Textbooks and Other Teaching Materials, which provides for the publication of textbooks in the Serbian language and Cyrillic script, and in the languages and scripts of national minorities for pupils following instruction in those languages. It also includes a provision prohibiting the threatening or undermining through textbooks of persons on the grounds inter alia of their racial, national, ethnic, linguistic or religious affiliation.<sup>78</sup> The Advisory Committee notes that in accordance with this Law, the need for textbooks in the languages of national minorities is to be established by the National Education Council upon the proposal of the Institute for the Advancement of Education and the relevant national minority council.<sup>79</sup> Minority language textbooks, including for individual subjects of interest to persons belonging to national minorities, may be produced directly in the minority language, through the translation of Serbian textbooks into the minority language, or through importing textbooks in the minority language from the relevant “kin-State”, and the involvement of national minority councils in this process is provided for.<sup>80</sup> According to the information provided by the authorities, national minority councils have full control over the contents of textbooks, in so far as the Ministry of Education verifies only the quality of translations and that the contents of the textbooks do not discriminate against other ethnic groups.

153. The Advisory Committee notes with interest that an extensive range of textbooks published in Albanian, Bulgarian, Croatian, Czech, Hungarian, Romanian, Ruthenian, Slovakian and Ukrainian have been approved for use in schools in Serbia since 2007; it observes nonetheless that many of these textbooks are for the learning of Serbian as a second language rather than for teaching in or of the minority language.<sup>81</sup> The Albanian national minority council has for example indicated that despite welcome progress over the last year in preparing textbooks in Albanian, at least five more years will be needed to produce the complete range of textbooks needed.

154. National minority councils indicate more generally that despite the measures put in place by the authorities, a lack of funds, low circulation of minority language textbooks, lack of harmonisation with the school syllabus in Serbia and long delays between the submission of a manuscript and the final distribution of textbooks are still barriers to the publication of new textbooks in minority languages or their use in schools. In consequence, in such cases, no textbooks, or textbooks in Serbian, have to be used instead; in the case of Bulgarian language textbooks, the national minority council has indicated that while progress achieved to date is welcome, the pace of production of textbooks is currently so slow that it is impossible to keep

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<sup>78</sup> See Articles 3 and 4 of the Law on Textbooks and Other Teaching Materials, Official Gazette No. 72/2009.

<sup>79</sup> Article 9 of the Law.

<sup>80</sup> See Articles 20(3) and (4), 21, 28(3) and (4) of the Law.

<sup>81</sup> See State Report pp249-295.

up with developments in the Serbian school curriculum, which has prompted some parents to remove their children from minority education altogether.

155. Some difficulties in terms of availability of teachers to provide minority language teaching also deserve the attention of the authorities, in particular as regards the implementation of accredited professional teacher training programmes for teaching in and of minority languages and the setting up of language departments for teacher training in universities.<sup>82</sup>

#### *Recommendations*

156. The Advisory Committee recommends that the Serbian authorities step up their efforts to ensure that the availability of textbooks in minority languages adequately reflects the needs expressed by national minorities. It emphasises in particular the importance of ensuring that approval procedures for textbooks are conducted expeditiously, that national minority councils are informed in good time where there is a need to resolve problems of harmonisation with the Serbian school syllabus and that low circulation does not constitute a barrier to the publication of such textbooks.

157. The authorities should ensure that adequate opportunities for teacher training of teaching in and of minority languages are provided and that the demands of national minorities in this regard are rapidly followed up.

### **Situation of the Roma in the educational sphere**

#### *Recommendations from the two previous cycles of monitoring*

158. In its previous monitoring cycles, the Advisory Committee called on the authorities to take all measures necessary to put an end to the practice of placing Roma children in “special schools” designed for children with mental disabilities and to take a series of measures in order to improve the access of Roma children to education.

#### *Present situation*

159. As part of broader educational reforms and the Strategy for the Improvement of the Status of Roma and accompanying Action Plan, the authorities have taken a number of welcome steps since 2009 to improve the access of Roma children to ordinary schools and reduce dropouts. These include inter alia increasing the duration of the free, compulsory pre-school preparatory programme from six to nine months and providing for additional mechanisms of support to children and teaching staff, including educational assistants in schools. The Advisory Committee welcomes indications that the primary school attendance rate of Roma children has increased over the past five years, a trend which the authorities attribute to facilitated enrolment procedures for children without complete documentation and to the distribution of free textbooks. Outreach projects run by civil society to encourage Roma parents to enrol their children in good time have also helped both to increase attendance rates and to ensure that Roma children are able to participate in ordinary classes. The Advisory Committee has also been informed that over-representation of Roma children in special schools is decreasing thanks to the higher enrolment of Roma children in pre-schools. Overall, however, attendance rates of Roma children in pre-schools and schools still remain lower than that of the general population, in particular for girls and in rural areas.<sup>83</sup>

<sup>82</sup> See State Report, Supplements of the national minority councils of the Croatian and Romanian national minorities, pp400-401 and 419.

<sup>83</sup> See State Report pp297-298.

160. The Advisory Committee is deeply concerned at reports that segregation of Roma children in schools continues to occur, with some schools being almost exclusively attended by Roma pupils. Cases have also been reported where Roma pupils from displaced families attend separate classes in a different building from the other pupils,<sup>84</sup> and the Advisory Committee has received reports that Roma children are still over-represented in over twenty special primary schools across Serbia. It remains concerned that poverty and the poor housing situation of Roma also continue to adversely affect the access to education of Roma children.

*Recommendations*

161. The Advisory Committee urges the authorities to take all necessary steps to eliminate segregation of Roma children in education, whether it occurs within individual schools, between schools or through over-representation in special schools.

162. It encourages the authorities to devise without delay policy measures to effectively increase access to mainstream education as well as to improve education outcomes for Roma children, including through providing facilitated access for pupils who lack complete documentation, promoting pre-school attendance, supporting the presence of educational assistants in schools and providing support such as free textbooks to socio-economically disadvantaged families.

**Recognition of diplomas and equal opportunities in access to higher education**

*Recommendations from the two previous cycles of monitoring*

163. In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to find comprehensive solutions to the issue of recognition of diplomas issued by educational institutions in Kosovo\* and ensure that decisions recognising diplomas delivered by other institutional establishments of the region were issued by the competent Serbian educational authorities within a reasonable time-frame. It also recommended that the Serbian authorities pursue their plans to provide Albanian students with adequate higher educational opportunities in Serbia.

*Present situation*

164. The Advisory Committee welcomes indications received from representatives of the Albanian minority that the situation as regards recognition of diplomas issued by educational institutions in Kosovo\* is improving, although it observes that not all problems appear to have been resolved. Acceleration in the relevant processes was still hoped for, and some optimism was based essentially on developments that were hoped for in the broader context of improving relations between Belgrade and Pristina.

165. The Advisory Committee notes with interest that new faculty branches have been opened in southern Serbia in order to improve access to higher education in this region. The University of Niš has opened departments of its Faculties of Law and Economics in Medveđa, which have been providing teaching in Serbian with simultaneous interpretation into Albanian since 2009. The signing of a memorandum of understanding between the University of Tetovo and the Subotica Economics Faculty of the University of Novi Sad has also, since 2011, enabled university education in the field of economics to be provided in Albanian in Bujanovac, with

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<sup>84</sup> See Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade 2013, pp71-72 and 79; Regular Annual Report for 2011, Belgrade 2012, p53; Ombudsman, Shadow Report to CERD, p10.



students who wish to do so able to follow just under half of their courses in Albanian and to draft their theses in Albanian.

166. The Advisory Committee welcomes these developments as the culmination of long-term efforts by the Coordination Body for Preševo, Bujanovac and Medveđa and other involved partners. It notes that some teething problems have been encountered in the first few years of operation of these structures, including difficulties in implementing simultaneous interpretation into Albanian in Medveđa and the lack of adequate premises in Bujanovac, and hopes that these issues can rapidly be resolved. It underlines in this context the importance of making quality higher education available in this region, as a means of ensuring that the local population is able both to acquire high-level competencies and to use them in employment without having to leave the region.

#### *Recommendations*

167. The Advisory Committee encourages the authorities to pursue their efforts to ensure that diplomas delivered by educational institutions in Kosovo\* and other institutional establishments in the region are duly and rapidly recognised.

168. It also strongly encourages the authorities to continue to support the provision of higher education in southern Serbia, to take all necessary measures to resolve the remaining difficulties in this context and to monitor and regularly evaluate progress achieved, in consultation with representatives of the national minorities concerned.

### **Article 14 of the Framework Convention**

#### **Teaching in and of minority languages**

##### *Recommendations from the two previous cycles of monitoring*

169. In its previous monitoring cycles, the Advisory Committee recommended that the Serbian authorities consolidate the legislative framework governing minority language teaching and ensure that such education met the educational standards generally applied in Serbia. It also recommended that a more flexible approach be favoured as to the number of pupils required to open a minority language class, especially in north-eastern Serbia.

##### *Present situation*

170. The Advisory Committee notes that Article 13 of the 2009 Law on National Councils of National Minorities regulates the competences of national minority councils in the field of education and defines their scope as regards curricula in national minority languages, notably for the teaching of minority languages themselves and teaching about the history, music and art of national minorities. National minority councils are moreover given overall responsibility for the education of persons belonging to national minorities in their mother tongue. Under Article 9 of the Law on the Fundamentals of the Educational System, also enacted in 2009,<sup>85</sup> education is provided in Serbian; for persons belonging to national minorities it is provided in their mother tongue, or exceptionally in Serbian or bilingually. This overarching provision is applied differently at different levels of schooling. At pre-school level, education is provided in the mother tongue, and may be in Serbian or bilingual with the consent of 50% of the parents; at primary and secondary levels, 15 first-grade pupils are required for education to be provided in

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<sup>85</sup> Official Gazette No. 72/2009.

the minority language or bilingually, but this requirement may be waived by the Minister of Education. Where pupils belonging to national minorities receive instruction through the medium of Serbian, the subject “mother tongue with elements of the national culture” is available to them.<sup>86</sup> The Advisory Committee understands however that work on revising the Laws on Primary and Secondary Education is presently under way.

171. In practice, teaching in minority languages is currently available in Albanian, Croatian, Hungarian, Romanian and Slovakian at pre-school, primary and secondary levels, and in Bulgarian and Ruthenian at primary and secondary levels. The subject “mother tongue with elements of the national culture” is also taught at primary school level in all of these languages except Albanian, as well as in Bosnian, Bunjevci, Czech, Macedonian, Romani and Ukrainian, but is provided at secondary level only in Bulgarian, Croatian, Romanian, Ruthenian and Slovakian. Bilingual pre-school education in minority languages and Serbian is provided in Albanian, Bosnian, Bulgarian, Croatian, German, Hungarian, Romani, Romanian, Ruthenian and Slovakian, as well as in Hungarian and German in one pre-school in Subotica.<sup>87</sup> The number of schools providing such instruction and the number of pupils receiving it varies widely depending on the situation of the various national minorities concerned.

172. The Advisory Committee welcomes the broad offer of teaching in and of minority languages available in Serbia. It observes, however, that a number of obstacles prevent the greater use of these opportunities by pupils belonging to national minorities. In particular, representatives of national minorities point to the need for formal surveys to be carried out in order to determine the number of pupils wishing to receive instruction in their mother tongue, a lack of political will to apply the law at local level as well as continued resistance in this respect by some school principals (expressed inter alia through delays in conducting the necessary surveys or their incomplete character when conducted), and the organisation of optional mother tongue classes at inconvenient times and in inconvenient locations. The lack of adequate textbooks (see above, Article 12) also hampers the provision of teaching in minority languages.

173. The Advisory Committee also notes that the Vlach and Roma minority councils have been prompted to devote considerable resources to establishing standardised versions of their languages, in part in order to resolve issues surrounding the provision of education in their mother tongues. The Advisory Committee observes in this respect that the existence of variants within a language is common and should not serve to prevent the teaching of minority languages.

#### *Recommendations*

174. The Advisory Committee encourages the Serbian authorities to continue providing education in minority languages and to ensure that restrictions are reduced during the process of revising the laws on primary and secondary education.

175. It further recommends that the authorities remove all unnecessary obstacles to the exercise of the right to education in minority languages, notably by ensuring that the legal provisions governing teaching in and of minority languages are applied consistently throughout Serbia, especially at local level, and that formal requirements for the opening of classes are not used as a means to hamper their opening in practice.

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<sup>86</sup> See Article 5, paragraph 2 of the Law on Preschool Education, Official Gazette No. 18/2010, Article 5 of the Law on Primary Education, as amended to 2009, and Article 5 of the Law on Secondary Education, as amended to 2009, as described in State Report pp313, 319 and 326, and similar provisions applicable in Vojvodina.

<sup>87</sup> See State Report pp314-331.

## Article 15 of the Framework Convention

### Representation in elected bodies

#### *Recommendations from the two previous cycles of monitoring*

176. In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to promote the effective participation of national minorities, including the numerically smaller ones, in the electoral process, and to undertake periodical reviews of the arrangements in place, in consultation with national minorities, in order to ensure that they adequately reflect the needs of persons belonging to national minorities.

#### *Present situation*

177. As the Advisory Committee has previously observed,<sup>88</sup> Serbian legislation includes commendable provisions aimed at promoting the representation of national minorities in elected bodies at national, provincial and local levels.<sup>89</sup> The Advisory Committee also welcomes the fact that in accordance with the 2009 Law on Political Parties, the number of members required to establish a political party of a national minority is 1 000, compared with 10 000 for other political parties.<sup>90</sup> In addition, the Law on Local Elections was amended in 2011 so as to require that, in units of self-government with an ethnically mixed population, account be taken of the representation of national minority political parties in the local assembly when appointing members of local electoral boards (polling station committees).<sup>91</sup>

178. The Advisory Committee notes with interest that several members of the national Parliament are persons belonging to national minorities, including one Roma MP, and that the Parliament has a Committee on Human and Minority Rights and Gender Equality that includes MPs belonging to national minorities. However, it has been reported that only the Hungarian and Bosniac minorities (the two largest minorities according to census figures) are regularly represented in the Parliament.<sup>92</sup> The Advisory Committee observes that only one general election has been held since the 2009 Law on Political Parties was enacted, and that the impact of this Law combined with the waiver of the 5% threshold for minority political parties under Article 81 of the Law on Election of Members of Parliament, is therefore difficult to assess. It notes with concern that some persons who do not belong to or genuinely represent national minorities have reportedly abused the lower threshold for the registration of political parties of national minorities in order to register their political parties as national minority parties and thereby benefit from the waiver of the 5% threshold for seats in parliament.

179. In view of the importance for national minorities of being able to participate effectively in public affairs, the Advisory Committee again underlines the usefulness of periodically reviewing the measures in place so as to ensure that the needs of all national minorities are

<sup>88</sup> See Second Opinion on Serbia, §§230-231.

<sup>89</sup> In particular, the 5% threshold for parties to enter the Parliament does not apply to parties of national minorities (see Article 81 of the Law on the Election of Members of Parliament), and the Constitution provides for proportional representation of national minorities in assemblies in those autonomous provinces and local self-government units that have an ethnically mixed population (see also Article 40 of the Law on Local Elections). In addition, the Law provides that ballot papers are to be printed also in the languages of national minorities in municipalities where these languages are in official use (see Article 60 of the Law on the Election of Members of Parliament and Article 28 of the Law on Local Elections).

<sup>90</sup> See Articles 8 and 9 of the Law on Political Parties.

<sup>91</sup> See Article 5 of the Law on Local Elections as amended by Article 2 of the 2011 Law on Altering and Amending the Law on Local Elections.

<sup>92</sup> Minority Rights Group International, World Directory of Minorities, Serbia Overview.

adequately taken into account. In this respect, and in addition to the issues mentioned above, the long-term consequences of allowing political parties of national minorities to represent only a single national minority ought to be evaluated, in particular as regards the possibilities for numerically smaller minority to be represented in parliament and as regards the risk that such a provision may heighten ethnic fragmentation.

*Recommendation*

180. The Advisory Committee encourages the Serbian authorities to continue to promote the effective participation of national minorities in electoral processes. At the same time, they should consider reviewing the provisions in place regarding the election of members of parliament in order to avoid abuse of the more flexible provisions regarding national minority parties and promote a more effective participation of numerically smaller national minorities in elected bodies at national level.

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

*Recommendations from the two previous cycles of monitoring*

181. In its previous monitoring cycles, the Advisory Committee recommended that the authorities collect comprehensive data on the representation of national minorities in public administration at all levels and take measures to ensure their adequate representation in public administration, the judiciary and the police force.

*Present situation*

182. As the Advisory Committee has previously noted,<sup>93</sup> a number of welcome provisions aim at promoting the adequate representation of national minorities in public administration. Nonetheless, it remains difficult to evaluate the impact of these provisions in practice, due to a lack of data in this field. The Advisory Committee notes that in 2010, having carried out a detailed study of the situation regarding the employment of national minorities in state institutions exercising public authority, the Ombudsman concluded that the state authorities were not respecting their obligations under domestic law in this field. It regrets that the authorities have not since followed up on the Ombudsman's recommendations in this respect.<sup>94</sup>

183. According to the information received by the Advisory Committee, there are relatively few problems with the participation of persons belonging to national minorities in administrative bodies at local level in areas where persons belonging to national minorities live compactly. However, national minorities remain significantly under-represented in state-level public administrations and public enterprises. There are reportedly hardly any Roma employed in the public sector (see further below, Participation in socio-economic life). Albanians and Bosniacs remain almost entirely absent from state-level administrations even in the areas where they are the majority population at local level – a fact that accentuates their sense that they are ignored, or considered only as a problem, by the State. Croatians and Ruthenians have also signalled some problems of insufficient participation in public bodies.

184. The Advisory Committee notes with interest that according to a study conducted by the Ministry of Justice, the presence of persons belonging to national minorities in appellate courts is highest in areas where national minorities live most compactly. The Ministry also keeps records of the languages in which judges can work, which may provide some indications as to

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<sup>93</sup> See Second Opinion on Serbia, §§236-238.

<sup>94</sup> Recommendation no. 45-218/09.

the extent to which persons belonging to national minorities are employed in the judicial system. Nonetheless, it continues to be the case that very few Albanians and Bosniacs are employed in the court system, which not only leads to problems in access to justice in minority languages in areas where this should be possible (see above, Article 10) but also contributes to a lack of confidence of these minorities in the judicial system.

185. The Advisory Committee welcomes the fact that there have been successful efforts to promote a more multi-ethnic police force in southern Serbia: approximately two-thirds of recruitments made as part of these efforts have been Albanian and one-third Serb, and the force is reportedly functioning well. However, these efforts have not been renewed in southern Serbia or followed up by other ministries, and have rarely been replicated in other regions. The Advisory Committee notes however with interest that, following a recommendation from the Ombudsman indicating that more persons belonging to national minorities should be employed in the police forces in Novi Pazar and Prijepolje, a project was run from March 2012 to March 2013 in which 67% of candidates belonged to national minorities from Novi Sad, Novi Pazar and Prijepolje.

#### *Recommendations*

186. The Advisory Committee reiterates its recommendation that the authorities collect comprehensive data on the representation of national minorities in public administration at all levels, while fully respecting international standards in the field of personal data protection.

187. It again calls on the authorities to take vigorous measures to address the under-representation of national minorities in public administration, particularly at state level. Such measures should also be taken as regards the judiciary, in particular for the Albanian and Bosniac minorities. It strongly encourages the authorities to pursue their efforts to create a multi-ethnic police force, and to pay particular attention to ensuring adequate representation of Bosniacs in the police force in the Sandžak.

### **Councils of National Minorities**

#### *Recommendations from the two cycles of monitoring*

188. In its previous monitoring cycles, the Advisory Committee called on the authorities to ensure that the future law on national minority councils provided appropriate guarantees for the participation of councils in relevant decision-making processes and that they received adequate support in practice to fulfil their tasks. It also highlighted that both the legal provisions governing the establishment of special electoral registers for the election of national minority councils and their implementation in practice must respect the principle of free self-identification.

#### *Present situation*

189. The Advisory Committee welcomes the enactment in 2009, after a long delay, of the Law on National Councils of National Minorities. This Law notably governs the competences of national minority councils with regard to the four fields in which national minorities may exercise their constitutional rights of self-government: culture, education, information in national minority languages and official use of language and script,<sup>95</sup> as well as electoral procedures for national minority councils and the latter's funding.<sup>96</sup>

<sup>95</sup> See Article 75, paragraph 3 of the Constitution.

<sup>96</sup> See Article 1 of the Law on National Councils of National Minorities.

190. Overall, the Law sets up a generous system in favour of national minority councils, covering a range of fields and granting the councils very wide-ranging competences. It must however be noted from the outset that flaws in the drafting and conception of the Law on National Councils of National Minorities, as well as conflicts with provisions of other laws, have led to serious problems regarding its implementation in practice (see further above, under the relevant Articles, and below). Moreover, at least eight initiatives for constitutional review of the Law, each contesting several of its provisions, were lodged between May 2010 and October 2011;<sup>97</sup> this appears to reflect significant dissatisfaction with the contents of the Law and creates uncertainty as to the effects of decisions made by some councils on the basis of the impugned provisions.

191. The Advisory Committee welcomes the election in June 2010, in the first elections held under the new Law, of nineteen national minority councils.<sup>98</sup> However, it notes with concern that the manner in which these elections were held has been the subject of considerable criticism. Sensitive personal data on ethnicity was reported to have been processed by unauthorised persons and applications for enrolment in special electoral registers to have been lodged on behalf of third parties without their consent, in breach of the principle of free self-identification.<sup>99</sup> Some public officials reportedly also refused to recognise the ethnic affiliation declared by individuals (in particular as regards Vlachs), again in breach of the principle of free self-identification.

192. In addition, the Advisory Committee finds highly questionable the authorities' modification of the rules governing constitutive meetings of national minority councils immediately prior to the constitutive meeting of the National Council of the Bosniac National Minority, so as to increase the quorum required for the constitutive meeting of this specific council to two-thirds of its elected members. The introduction of this requirement, which applied only to the Bosniac national minority council, was later found by the Ombudsman to have been carried out without a legal basis and by the Commissioner for the Protection of Equality to have constituted discrimination against the National Council of the Bosniac National Minority.<sup>100</sup> Moreover, the modified rule subsequently served as the basis of the authorities' refusal to recognise that the council, elected in 2010, had been constituted, as it held its constitutive meeting with less than two-thirds of its members present. In consequence, it is the council elected in the previous elections of 2003 – with a different political composition – which is recognised by the authorities as the council that continues to work until the next elections.<sup>101</sup> While the latter appears to be exercising these functions sincerely, the Advisory Committee finds highly regrettable the authorities' intervention in the functioning of the Bosniac Minority Council, which can only be perceived by minorities as politically motivated. It moreover appears to have heightened tensions within the already divided Bosniac minority<sup>102</sup> while strengthening the impression amongst representatives of this minority that the authorities were seeking to

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<sup>97</sup> See Constitutional Court decision IUz-882/2010 of 17 January 2013, finding a large number of the initiatives inadmissible. The Constitutional Court's decision on the merits of the initiatives regarding Articles 2(2), 10(6), 10(10)-(13), 10(15), 11(3), 12, 13(3), 14, 15(7), 19(2), 20(1)-(4) and 23-27 is still awaited.

<sup>98</sup> In accordance with Articles 29 ff. of the Law on National Councils of National Minorities, sixteen councils were elected through direct elections and three (the councils of the Macedonian, Slovenian and Croatian national minorities) were elected indirectly, through electoral assemblies.

<sup>99</sup> See Protector of Citizens, 2010 Regular Annual Report, Belgrade, 2011, p85.

<sup>100</sup> See Protector of Citizens, 2010 Regular Annual Report, Belgrade, 2011, pp85-86 (finding there to be no legal basis for the Ministry of Human and Minority Rights to have issued any rules of procedure with respect to the constitutive assemblies of national councils of national minorities) and Commissioner for the Protection of Equality, Regular Annual Report for 2010, Belgrade, March 2011, pp53-54.

<sup>101</sup> In accordance with Article 137, paragraph 3 of the Law on National Councils of National Minorities.

<sup>102</sup> Divisions centering around the legitimacy of religious leaders have spilled over also into the political sphere.

portray the minority as problematic, and at the same time diminishing public confidence in the possibility for all national minority councils to carry out their work independently.

193. The National Councils of the Ashkali, Bunjevci and Slovenian national minorities that were elected in 2010 were subsequently dissolved due to their failure to carry out certain basic activities provided for by law.<sup>103</sup> No provision is made in the Law for new elections to be held in such cases – an omission that needs to be rectified, in particular taking into account the specific situations of numerically smaller minorities.

194. The Advisory Committee notes that many of the difficulties that have arisen in the implementation of the Law flow directly from contradictions between this Law and other legislation.<sup>104</sup> A further major issue of concern is the lack of criteria applicable to decisions of a national minority council to declare an institution to be of particular significance to it. Bearing in mind that the funding allocated to national minority councils depends in part on the number of institutions that they have declared to be of particular significance to the minority they represent (see above, Article 5), this leaves broad scope for abuse of this right.<sup>105</sup> Moreover, nothing prevents two or more councils from declaring the same institution to be of particular significance to them and requesting the transfer of founder rights in their favour – a situation which is however not specifically envisaged by the Law, which lays down no bases on which to resolve possible conflicts in this area.

195. As mentioned above (see comments under Article 5), the significant differences in the amounts of funding available to national minority councils based in Vojvodina (which may receive provincial support) and those based elsewhere in Serbia (which may not)<sup>106</sup> lead to regional inequalities between the national minority councils. Those councils whose seats are not in Vojvodina (such as the Albanian, Bosniac and Bulgarian national minority councils) find themselves less well positioned to fund their activities, and a two-speed system is created in which national minority councils based outside Vojvodina are inevitably left behind.

196. The Advisory Committee notes that in accordance with the system set up by the Law on National Councils of National Minorities, a single Council is elected by each national minority to exercise the autonomy of persons belonging to that national minority throughout Serbia. No equivalent bodies exist at the local level, although many decisions concerning the exercise of minority rights (such as changes to municipal statutes to bring a minority language into official use – see above, Article 10) are made at local level. In practice, national minority councils play an overwhelmingly dominant role in the realisation of minority rights in Serbia, having in effect become the main channel of participation for national minorities. Coupled with their political

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<sup>103</sup> Article 40 of the Law on National Councils of National Minorities provides that the relevant ministry shall dissolve a national council if it has not been convened for more than six months, its president is not elected within 60 days or it fails to adopt its statute within the requisite time-limit.

<sup>104</sup> For example, different solutions specified in Article 17(2) of the Law on National Councils of National Minorities and Article 43(2) of the Law on Culture for appointing board members to institutions in cases where more than one national minority council has declared the same institution to be of particular significance to them: see Belgrade Centre for Human Rights, *Realisation of Rights of National Minorities*, Belgrade, 2013, pp16-17 and the contrasting solutions applied in the concrete cases described therein.

<sup>105</sup> See for example the declarations by both the Croatian and the Roma national minority councils that the Palić Zoo is an institution of particular significance to them; see also the lack of clear criteria applied by the Hungarian national minority council in declaring 37 institutions to be of particular significance to the Hungarian national minority. See Belgrade Centre for Human Rights, *Realisation of Rights of National Minorities*, Belgrade, 2013, pp15-16.

<sup>106</sup> That is, all local self-government units where a single national minority constitutes more than 5% of the local population, or all persons belonging to national minorities that constitute more than 10% of the population.

role, this makes it difficult to find common positions within national minority councils. In this regard, the Advisory Committee notes with regret that the establishment of the Vlach National Minority Council has not created a forum in which the holders of differing views on Vlach identity have been able to find common ground and work towards shared goals, but has instead become the object of a power struggle between different groups within the Vlach minority. The Advisory Committee is also concerned that the national minority council system, as it is presently conceived, may lead to fragmentation in the representation of minorities, in so far as each council represents only the interests of a single national minority and little has been done to encourage co-operation between the various councils. Long-lasting problems between the Romanian and Vlach national minority councils, even on issues where there may be common interests, are particularly illustrative of this difficulty.

197. The Advisory Committee observes that the establishment of councils for inter-ethnic relations in all local self-government units with an ethnically mixed population<sup>107</sup> could to some extent serve to counterbalance this situation and in particular, to ensure that a forum exists in which to bring together all issues of inter-ethnic relations at local level. However, although some competences of these councils were transferred to national minority councils by the 2009 Law on National Councils of National Minorities, few of these councils have in fact been established and even fewer are fully operational. Moreover, where they do exist, the member of the council for inter-ethnic relations appointed to represent the interest of each national minority is designated by the national council of the national minority, in effect reinforcing the monopoly of national minority councils on national minority-related issues.

198. Finally, the Advisory Committee recognises that both mainstream and minority political parties can play a useful role in promoting the rights of persons belonging to national minorities. However, it draws attention to the risks inherent in the combination of extensive competences granted to national minority councils in Serbia and the domination of some national minority councils by political parties. It is particularly concerned that this situation may encourage some political parties to seek to consolidate their political power through the national minority councils, rather than focusing their work within national minority councils primarily on the concerns that these councils are designed to protect.

199. The Advisory Committee welcomes the authorities' recognition that amendments to the Law on National Councils of National Minorities are needed and notes with interest that a working group including representatives of all key ministries was set up in June 2013 to prepare draft amendments to this Law.<sup>108</sup> However, only two representatives of national minorities (compared with nineteen national minorities having elected national minority councils in 2010) have been appointed to participate in this working group. The Advisory Committee acknowledges that these representatives have been designated to act in this context for all national minorities. Nonetheless, given the wide variations between the situations of the numerous national minorities present in Serbia, it finds regrettable that there is not broader direct participation of representatives of national minorities in such a working group.

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<sup>107</sup> In line with Article 114 of the Law on National Councils of National Minorities and Article 2 of the Decision on the Methods and Criteria for Allocating Budgetary Resources of the Provincial Secretariat for Regulations, Administration and National Communities to the National Councils of National Minorities, Official Gazette of the Autonomous Province of Vojvodina, No. 23/2010.

<sup>108</sup> The Advisory Committee understands that, pending the outcome of the Constitutional Court proceedings referred to above, the Working Group is focusing first on the rules and procedures governing elections to national minority councils and the constitution of national minority councils after their election, and will examine issues related to the competences of national minority councils at a later stage.



*Recommendations*

200. The Advisory Committee strongly encourages the authorities to pursue their work towards revising the Law on National Councils of National Minorities, in close consultation with representatives of all national minorities and of civil society. In so doing, particular care should be taken to remove conflicts with other laws; to lay down clear criteria for the transfer of competences to national minority councils; to ensure that all cases where conflicts of interests between two or more councils may arise are regulated on the basis of clear criteria; and to strengthen the legal provisions governing elections to national minority councils and their implementation, so as to ensure full respect for the principle of free self-identification.

201. The authorities should abstain from intervening in the internal functioning of national councils of national minorities.

202. The Advisory Committee recommends that the authorities promote the establishment and effective functioning of councils for inter-ethnic relations at local level in all municipalities with an ethnically mixed population.

**Participation in socio-economic life***Recommendations from the two previous cycles of monitoring*

203. In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged areas by adopting temporary positive measures, with particular emphasis on effectively addressing the problems identified regarding the access of Roma to employment.

*Present situation*

204. The Advisory Committee welcomes the continued efforts of the Coordination Body for Preševo, Bujanovac and Medveđa, working together with these three municipalities to improve the situation in a variety of fields, including as regards education, strengthening civil society, infrastructure and economic development. It understands that the Coordination Body and representatives of the Albanian national minority reached agreement in early 2013 on the issues that should be on the agenda for improving the situation in this region, and hopes that this shared understanding will accelerate positive processes that are already under way and provide new impetus for overcoming the socio-economic disadvantages experienced in this region. The Advisory Committee notes with regret, however, reports that leaders of ethnic Albanian parties from southern Serbia decided in late November 2013 to suspend talks with the central authorities, following the rejection of amendments to the Courts Network Bill that had been proposed by an ethnic Albanian MP (see also above, Article 10).

205. The Advisory Committee observes that other regions where minorities live, such as eastern Serbia and the Sandžak, also experience relative socio-economic disadvantage. It emphasises the importance not only of taking adequate temporary special measures within the meaning of Article 4, paragraph 2 of the Framework Convention to promote effective equality of persons belonging to national minorities but also of ensuring that persons belonging to national minorities in these regions are duly involved in designing, implementing and evaluating such measures, which are of direct concern to them and should be adapted as a function of their specific needs.

206. For the Roma national minority, discrimination in all fields of daily life (see above, comments under Articles 4 and 12), the very high proportion of Roma that have no profession or professional qualifications<sup>109</sup> and high levels of prejudice against them also severely limit their opportunities in the labour market. This marginalisation is all the more detrimental given that many private sector jobs are reportedly never advertised but simply attributed through existing networks of contacts, making the cycle of exclusion particularly difficult to break, including for highly qualified Roma. The Advisory Committee welcomes the efforts currently being made to combat these phenomena at both state and provincial level, as part of the National Employment Action Plan and the Strategy for the Improvement of the Status of the Roma.<sup>110</sup> It stresses the need to take a comprehensive approach in this field, directing some measures also towards changing employers' attitudes. The impact of these efforts should also be evaluated regularly in order to adapt them as needed, including to a constantly evolving labour market.

#### *Recommendations*

207. The Advisory Committee calls on the Serbian authorities to pursue their efforts to improve the situation in the Preševo, Bujanovac and Medveđa municipalities with a view *inter alia* to strengthening development in this region as well as the participation of persons belonging to the Albanian minority in the economic life of the region.

208. It urges the Serbian authorities to adopt positive measures aimed at addressing the situation faced by persons belonging to national minorities living in economically disadvantaged areas, in consultation with representatives of the national minorities concerned. Particular emphasis also still needs to be placed in this context on effectively addressing the problems identified regarding the access of Roma to employment.

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

#### **Bilateral agreements and regional co-operation**

##### *Recommendations from the two previous cycles of monitoring*

209. In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to step up efforts to conclude bilateral agreements with neighbouring countries and to ensure that the conditions for the effective implementation of existing agreements were in place.

##### *Present situation*

210. The Advisory Committee notes that bilateral agreements relevant to the exercise of minority rights are in place with Croatia, Hungary, Romania and "the former Yugoslav Republic of Macedonia". It welcomes the on-going European Union-mediated dialogue between Belgrade and Pristina, which has resulted in significant progress on long-standing issues. No new agreements have been concluded with other states (notably Albania, Bosnia and Herzegovina, Bulgaria and Montenegro) since the Advisory Committee's previous Opinion.

211. While acknowledging the existence of legal and other obstacles that may at present hamper the conclusion of bilateral agreements with these states, the Advisory Committee recalls that such agreements as well as informal cross-border co-operation can contribute to the promotion of the rights of persons belonging to national minorities and of tolerance, prosperity, stability and peace in the region.

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<sup>109</sup> 85%: see State Report, p365.

<sup>110</sup> See State Report, p363 ff.

*Recommendation*

212. The Advisory Committee encourages the authorities to pursue their efforts with respect to regional co-operation and dialogue.

### III. CONCLUSIONS

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

#### **Positive developments following three cycles of monitoring**

214. Serbia has continued to strengthen the legal provisions in place governing the exercise of national minority rights. The Law on National Councils of National Minorities, enacted in 2009, grants these councils wide-ranging competences in the fields of culture, education, information in national minority languages and official use of language and script, as well as establishing electoral procedures for national minority councils and the latter's funding. The entry into force of the 2009 Law on the Prohibition of Discrimination has for its part significantly strengthened the legal framework in place regarding the promotion of effective equality and protection from discrimination on grounds relevant to national minorities.

215. Important institutional developments have also taken place, notably through the 2010 election of national minority councils on the basis of the 2009 Law on National Councils of National Minorities and the establishment of the Commission for the Protection of Equality in 2010. The Commissioner for the Protection of Equality, the Ombudsman and Provincial Ombudsman have been active in cases concerning persons belonging to national minorities.

216. Considerable efforts were made to ensure that the right to free self-identification was fully guaranteed in the context of the 2011 census.

217. The authorities have made significant efforts to develop comprehensive policies to promote equal opportunities for the Roma, including through the adoption in 2009 of the Strategy for the Improvement of the Status of Roma and an Action Plan for 2009 to 2011. After some delays, an Action Plan for 2012-2014 was adopted in June 2013. Welcome steps have been taken to resolve problems in acquiring identity documents and progress has been registered in this field. Legislative and policy steps have also been taken in recent years to improve the access of Roma to social housing, and initiatives such as the employment of health mediators have produced positive results in the field of health.

218. Levels of sympathy amongst the population for protecting the language rights of persons belonging to national minorities are reported to be relatively high and the number of racist incidents reported in the last few years has dropped. Hate motivations are now a mandatory aggravating circumstance for all ordinary criminal offences, and initiatives have been taken to train the police and judiciary on discrimination issues and tolerance and to improve communication between the police and national minorities as well as particularly marginalised groups.

219. Public support is provided to a variety of print media in minority languages in Vojvodina and public radio and television broadcasting is now available, to varying degrees, at state, provincial or local level in a total of thirteen minority languages. Minority languages have been introduced in official use in a number of additional municipalities and settlements. Amendments to the Law on the Official Use of Language and Script have removed territorial limitations on the exercise of the right to use names in minority languages and scripts.

220. A broad offer of teaching in and of minority languages is available in Serbia at pre-school, primary and/or secondary levels, depending on the situation of the national minority concerned. At the level of higher education, the situation regarding the recognition of diplomas issued by institutions in Kosovo\* and access to higher education within southern Serbia is reported to be improving.

221. Serbian legislation includes commendable provisions aimed at promoting the representation of national minorities in elected bodies at all levels and several persons belonging to national minorities have been elected to the national parliament. The participation of persons belonging to national minorities in administrative bodies at local level in areas where national minorities live compactly also appears to be functioning relatively well.

222. Nineteen national minority councils were elected in June 2010. The establishment in June 2013 of a working group including representatives of all key ministries to draft amendments to this Law with a view to overcoming a certain number of problems identified following its entry into force, is welcome, although it is important that this process be conducted in full consultation with national minorities.

### **Issues of concern following three cycles of monitoring**

223. A comprehensive and strategic approach to the integration of national minorities in Serbian society is still lacking, and inter-ethnic relations in Serbia remain a source of concern. A lack of comprehensive equality data also makes it more difficult to design targeted and effective policies for overcoming discrimination experienced by persons belonging to national minorities. The Commissioner for the Protection of Equality has not yet been able to recruit sufficient staff and anti-discrimination legislation is still not sufficiently understood amongst the general public. Moreover, the recommendations of the Commissioner, the Ombudsman and Provincial Ombudsman are not always followed up expeditiously by the authorities.

224. Flexibility will need to be applied, following a widely observed boycott of the 2011 census by the Albanian minority, and reported under-representation of Roma, in the analysis and processing of the census results with respect to these minorities.

225. As regards the Roma, advances in resolving problems related to acquiring identity documents do not automatically lead to the resolution of problems of statelessness or access to social rights. Many Roma still live in substandard conditions and forced evictions still occur. The overall health situation of the Roma population for the moment also remains worse than that of the rest of the population. Segregation in education still occurs, and the access to the labour market of Roma remains limited. The updated Action Plan for implementing the Strategy for the Improvement of the Status of Roma needs to be implemented rapidly.

226. The State Fund for National Minorities is still not operative, meaning that decisions of national minority councils may have a disproportionate impact on the manner in which national minorities' cultural activities are supported. Systems for allocating funds for the cultural activities of national minority councils also reportedly weaken the situation of numerically smaller and more recently recognised minorities.

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\* 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.

227. Xenophobia and religious intolerance remain present in Serbian society, as well as prejudice against the Roma, and racist attacks against persons belonging to national minorities and their property continue to occur. The relevant provisions of criminal legislation need to be more rigorously applied in order to ensure that hate-motivated offences are adequately investigated, prosecuted and punished and efforts to train the police and the judiciary on discrimination issues and tolerance, as well as to promote a more multi-ethnic police force, need to be both sustained in time and expanded in scope.

228. The possible impact on the availability of broadcasting in minority languages of privatisation, digitalisation and the mooted abolition of television licence fees is a source of concern to representatives of national minorities. Concerns have also been expressed about a lack of pluralism in and the editorial independence of national minority media.

229. Progress in introducing minority languages in official use has generally been slower outside Vojvodina and practical difficulties in this regard reportedly persist. The removal of territorial limitations on the exercise of the right to use names in minority languages and scripts needs to be duly and consistently applied by the Office of the Registrar of births, marriages and deaths. Topographical indications in minority languages approved by national minority councils should also be displayed in accordance with the Law.

230. A certain number of obstacles prevent the greater use by pupils belonging to national minorities of opportunities to receive teaching in and of minority languages. These include a lack of political will to apply the Law at local level in some cases, continued resistance in this respect by some school principals, the organisation of optional mother tongue classes at inconvenient times and in inconvenient locations, and the lack of adequate textbooks.

231. It remains difficult for numerically smaller national minorities to be represented in parliament and there have been reports of abuses of the lower threshold for the registration of minority political parties. National minorities also remain significantly under-represented in state-level public administrations and public enterprises.

232. A number of flaws in the Law on National Councils of National Minorities, as well as conflicts with provisions of other laws, have led to serious problems regarding its implementation in practice, which still need to be resolved. Some problems encountered regarding the protection of personal data and the right to free self-identification in the 2010 elections for national minority councils also need to be resolved before the next elections are held in 2014.

### **Recommendations**

233. 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:

#### **Issues for immediate action<sup>111</sup>**

- **ensure that adequate human and financial resources are allocated to achieve the objectives fixed in the Action Plan for the Implementation of the Strategy for**

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<sup>111</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

**the Improvement of the Status of Roma 2012-2014 and that local self-government authorities and Roma representatives are directly involved in the evaluation of the implementation of the Strategy; put an end to forced evictions and introduce in domestic law provisions guaranteeing the right to adequate housing and to be free of forced evictions; urgently address access to health care and the overall health situation of the Roma;**

- **eliminate segregation of Roma children in education and devise without delay measures to effectively increase access to mainstream education as well as to improve education outcomes for Roma children;**
- **promote the effective participation of national minorities, including numerically smaller ones, in electoral processes and take vigorous measures to address the under-representation of national minorities in public administration, particularly at state level; pursue efforts to create a multi-ethnic police force;**
- **pursue work towards revising the Law on National Councils of National Minorities, in close consultation with representatives of all minorities and of civil society, in order to ensure the effective participation of persons belonging to national minorities in all matters affecting them;**

Further recommendations<sup>112</sup>

- pursue a flexible approach in the use of 2011 census data for policy development affecting the rights of persons belonging to national minorities, in particular as regards Roma and in areas where a boycott had a significant impact on the results of the census;
- give rapid and complete follow-up to the findings and recommendations of the Ombudsman, Provincial Ombudsman and Commissioner for the Protection of Equality in all cases affecting the rights of persons belonging to national minorities and provide adequate support to these institutions to ensure the efficient handling of complaints received and that they are known and accessible to persons belonging to national minorities;
- pursue and strengthen efforts to overcome situations of statelessness and lack of identity documents;
- intensify efforts to strengthen interactions between the various communities living in Serbia; ensure that the criminal justice system adequately addresses hate crimes and intensify efforts to raise the awareness of all relevant actors of the criminal justice system as to the importance of prosecuting hate-motivated offences as such;
- take into account the need for sufficient and stable funding to guarantee the viability of media in minority languages and review the impact of privatisation and the introduction of digital television broadcasting on minority media, in consultation with national minorities;
- ensure that the legal provisions governing the use of minority languages in

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<sup>112</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

contacts with authorities at local level are fully implemented and promote the recruitment of civil servants at local level who are proficient in the relevant minority languages; intensify efforts to ensure the full and proper application of the rules currently applicable to registering names in minority languages and as regards the display of topographical indications in minority languages;

- pursue efforts to ensure that diplomas delivered by educational institutions in the region are duly and rapidly recognised and continue to support the provision of higher education in southern Serbia;
- step up efforts to ensure that the availability of textbooks in minority languages adequately reflects the needs expressed by national minorities and remove obstacles to the exercise of the right to education in minority languages;
- promote the establishment and effective functioning of councils for inter-ethnic relations at local level in all municipalities with an ethnically mixed population.