

Expert Report

on the situation of minority rights in the Republic of Serbia

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1. Introduction: the mandate of the expert group, structure and content of the report

The present report presents the findings and the recommendations of an expert mission on the protection of minorities which took place between 23 and 27 March 2015 in Serbia. It involved two independent experts from EU Member States, EU staff from the Commission (DG NEAR) and from the EU Delegation in Belgrade. Held as a follow up to the expert mission which had taken place between 9 and 13 July 2012¹, it focused on the national minorities in Serbia with a “kin- State” in the EU while at the same time addressing the situation of other national minorities such as, e.g. the Albanian or Bosniak national minorities. It did not cover Roma as their legal and factual situation is the subject of specific monitoring and other activities conducted by the EU and other international actors.

While the experts are aware, that the situation of each minority is different, they are, however, of the opinion that several elements are common to all national minorities and require, to be properly addressed, a holistic approach. Therefore, some considerations and recommendations are applicable to all national minorities living in Serbia as appropriate.

This focused aim entirely matched the group of experts’ working programme. The group met with representatives from national administration, as well as the local government bodies in the autonomous province of Vojvodina, several National Minority Councils (*NMCs*), local Councils for Interethnic Relations (*CIER*) and civic associations in various parts of Serbia. During the week two teams had a number of worthwhile meetings in the following nine municipalities: Belgrade, Bor, Bosilegrad, Dimitrovgrad, Negotin, Novi Sad, Petrovac na Mlavi, Subotica and Vršac.

Since the European standards for the protection of the rights of persons belonging to national minorities are primarily set by the 1995 Council of Europe’s Framework Convention for the Protection of National Minorities (*FCNM*), this report mainly follows the structure of the Convention. In assessing the situation in Serbia, the experts took into particular account the Third Opinion on Serbia, adopted by the Advisory Committee established under the FCNM.²

For the sake of clarity, each section of the report is composed of three elements: 1. A short summary of the major findings of the 2012 Expert Mission and of the 2013 ACFC Opinion; 2. An analytical part based on the legislative and factual framework, with particular regard to the effective implementation of the rights of persons belonging to national minorities; and the corresponding findings of the mission; 3. The recommendations of the mission.

¹ See R. Hofmann/ D. Jilek/ F. Palermo, (Final) Expert Report on the situation of minority rights in the Republic of Serbia (dated 14 September 2012)

² ACFC, Third Opinion on Serbia (adopted on 28 November 2013), ACFC/OP/III(2013)006 (made public on 23 June 2014)

2. Overall situation of minorities in the Republic of Serbia

2.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission Report concluded that the legal framework for the protection of the rights of persons belonging to national minorities in Serbia puts the country above the European average in this field. Its essential elements were contained in four main acts: The 2006 Constitution; the 2002 Law on National Minorities; the 2009 Law on National Minority Councils (NM); and the 2010 Law on Official Use of Languages and Script. The Expert Mission further concluded that there were considerable limitations concerning the effective implementation of the applicable legislation, albeit with significant differences between the far more advanced Autonomous Province (AP) of Vojvodina and the rest of Serbia. According to the experts, such delay in implementation had to do with a number of factors, including lack of continuity in the allocation of institutional responsibilities for national minorities, insufficient capacity in parts of the administration, especially at local level, but also an overall underdeveloped sensitivity and awareness of minority issues and rights in large parts of the population.

In sum: The legal framework regulating rights of persons belonging to national minorities in the Republic of Serbia was considered to be highly developed and sophisticated, relatively detailed in the legal provisions, open to international norms. However, it was also considered to be complex and without sufficient overall cohesion as discussed below.

The consequences were manifold: This system sometimes resulted in excessive complexity and actual conflicts of norms which were addressed by political rather than legal means; there was little awareness of minority rights among civil servants, politicians and the general public; institutional responsibility and coordination of minority issues had been in a state of flux and depending largely on political developments; the strong institutionalization of the minority rights system, mostly due to the NMCs, resulted in over-politicization of minority issues inducing self-isolation of minorities and insufficient interaction among different communities in society as a whole.

Based on this analysis, the 2012 Expert Mission formulated the following recommendations: The Serbian authorities should avoid permanent shifts in institutional responsibility by establishing as stable and independent system of national coordination on minority issues with clearly defined competences and obligations; they should improve awareness of the presence of minorities in the country and of their rights among the wider public and civil servants at local level; they should constantly review the legislation in order to avoid conflicts of norms that might arise in practice and guarantee better coordination; finally, they should reconsider the role of NMCs.

b) Soon after the submission of the Expert Mission Report, the results of the 2011 census were published.³ In its 2013 Opinion, the ACFC came to the conclusion⁴ that considerable

³ See 3rd State Report of Serbia, 14 March 2013, ACFC/SR/III(2013)001, p. 13. According to these results, Serbs make up 83.3% of the population (5,988.150 persons (as opposed to 6.212.838 persons (82.9%) in the 2002 census (the number of the population of Serbia decreased from 7.498.001 persons to 7.186.862 persons). Among the national minorities are the following groups: Hungarians (253.899, 3.5%; in 2002 293.299, 3.5%); Roma (147.604, 2.1%; in 2002 108.193, 1.4%); Bosniaks (145.278, 2.0%; in 2002 136-087, 1.8%); Croats (57.900, 0.8%; in 2002 70.602, 0.9%); Slovaks (52.750, 0.7%; in 2002 59.021, 0.8%); Montenegrins (38.517, 0.5%; in 2002 60.049, 0.9%); Vlachs (35.330, 0.5%; in 2002 40.054, 0.5%); Romanians (29.332, 0.4%, in 2002 34.576, 0.5%); Macedonians (22.755, 0.3%; in 2002 25.847, 0.3%); Muslims (22.301, 0.3%; in 2002 19.503, 0.3%); Bulgarians (18.543, 0.3%; in 2002 20.497, 0.3%); numerically smaller groups include Bunyevtsi (16.706, in 2002 20.497); Ruthenians (14.249, in 2002 15.905); and Albanians (5.809, in 2002 61.647, 0.8%).

efforts had been made to ensure that the right to self-identification was fully guaranteed. The census included entirely open questions about national and religious affiliation and mother tongue, with no pre-defined lists, and census enumerators – among them persons belonging to national minorities in areas of their substantial settlement - were instructed to record exactly the answers given to these questions. However, following a widely observed boycott of the census by the Albanians and reported under-representation of the Roma, the ACFC called upon the authorities to apply flexibility with regard to the exercise of minority based on the number of persons belonging to these minorities in a given municipality.

2.2. Findings of the 2015 Expert Mission

The authors of the present report find that while the legal framework applicable to national minorities in Serbia remains above the European average, the shortcomings identified in the 2012 Report persist: the complexity of this framework and its lack of full clarity have been further increased by the recent (16 January 2014) judgment of the Serbian Constitutional Court in which it struck down 10 essential articles of the Law on NMCs as unconstitutional.⁵ In addition thereto, there is still no full agreement as to the factual consequences of the 2009 decision of the Constitutional Court in which it held that the competences of the AP Vojvodina did not encompass the regulation of the use of minority languages as official languages in municipalities.⁶

Based on their experiences, they consider that there is room for improvement regarding awareness of minorities in the country and that there is still limited awareness and recognition of minority rights among civil servants, politicians and the general public; that the recent re-organization of competences within the government has again increased the widespread feeling among representatives of national minorities that there is a lack of clear institutional responsibility and coordination of minority issues on central State level; that the role and function of NMCs remains unclear and their potential to impact on the formulation and implementation of a state-wide minority policy remains underexplored – a situation which is additionally aggravated by the fact that the political and legislative discussion on a reformed Law on NMCs taking into account the recent ruling of the Constitutional Court seems to be deadlocked; and finally, that a number of NMCs seem to continue to focus more on issues of general policy rather than on minority issues thus contributing to a situation of insufficient interaction among some ethnic minority communities and society as a whole.

2.3. Recommendations

- Pursue a flexible approach in the use of the 2011 census data for policy developments affecting the rights of persons belonging to national minorities, in particular as regards Albanians;
- Improve awareness of the presence of minorities in the country and of their rights among the wider public and civil servants, including at local level;
- Avoid permanent shifts in institutional competences and responsibilities by establishing a stable and independent system of national authorities in the field of minority issues;
- Review the legislation in order to avoid conflicts of norms and finalize, as a matter of priority, the reformulation of the Law on NMC;

⁴ See 3rd ACFC Opinion on Serbia, 28 November 2014, ACFC/OP/III(2013)006, para. 17.

⁵ Constitutional Court of Serbia, Decision 20/2014.

⁶ Constitutional Court of Serbia, Decision 353/2009.

- Reconsider the role and function of NMCs, ensuring a focus on minority issues, enabling and enhancing potential to impact on the formulation and implementation of state-wide minority policy.

3. Self-identification

3.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission concluded that the principle of self-identification with regard to belonging to a national minority, stipulated by Article 3.1 FCNM, was entrenched in Article 47 of the Constitution and that Article 2.1 of the Law on the Protection of Rights and Freedoms of National Minorities provided a general definition of national minorities, which is fully in line with international standards. It further reported that, among the involved communities, there was disagreement as to whether Bunjevtsi have distinct identity from the Croatians, and the Vlachs from the Romanians. It stressed that the decision of the authorities not to become engaged in these issues and to allow all groups to form their own NMC, was to be recommended as an expression of respect for the principle of self-determination. Having presented in quite some detail the three main orientations among the Vlach minority and the various conflicts existing among them, the experts concluded that there was urgent need for improving dialogue among these three components of the Vlach community; furthermore, there was an equally urgent need for increased cooperation among the Vlach and the Romanian NMCs and the Bunjevtsi and Croat NMCs, respectively. Finally, the experts underlined the need to raise the general awareness about sensitivity of ethnic data collection and to streamline the applicable legislation to guarantee full compliance with international standards in this regard.

b) In its 2013 Opinion, the ACFC found that the Serbian authorities had continued to abide strictly by the principle of free self-identification; nonetheless, it encouraged them to take steps – while maintaining strict neutrality – to promote constructive dialogue between persons identifying themselves as belonging to the Romanian and Vlach national minorities as well as between persons identifying themselves as belonging to the Croat and Bunjevtsi national minorities. The ACFC called on the authorities to ensure that the existing legal framework relating to sensitive personal data is fully implemented.

3.2. Findings of the 2015 Expert Mission

The experts noted that many of the Serbian authorities continued to abide strictly by the principle of free self-identification although they are concerned about reports according to which the President of the Republic had financed, from the President's budget, (some) expenses for the publication of textbooks in Bunjevak language, rather than funding which should be provided for such purposes through the Ministry of Education. They wish to join the ACFC in encouraging the Serbian authorities to take steps – while maintaining strict neutrality on the issue of the disputed distinct identities of the Bunjevtsi and Vlach communities, respectively – to promote a constructive dialogue among persons belonging to the Romanian and Vlach national minorities and the Bunjevtsi and Croat national minorities with a view to achieving, as far as possible, pragmatic solutions to problems of common concern.

The experts also stress the need to continue raising general awareness about the sensitivity of ethnic data and to implement fully and throughout the entire territory of Serbia the existing legislation in order to guarantee full compliance with international standards.

3.3. Recommendations

- Continue fully to respect the principle of self-identification;
- Continue to follow a policy of non-interference with regard to the contested identities of Bunyevtsi and Vlachs;
- Encourage cooperation between, respectively, the Vlach and the Romanian NMC on the one hand and the Bunyevtsi and the Croatian NMC on the other;
- Raise awareness about sensitivity of ethnic data collection and ensure full implementation of the existing legislation in order to guarantee full compliance with international standards in this regard.

4. Non-discrimination and positive measures

4.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission welcomed the adoption, in 2009, of the comprehensive Law on the Prohibition of Discrimination and noted the activities of the Commissioner for the Protection of Equality and the Protector of Citizens (Ombudsman), both at national and provincial (Vojvodina) level. The experts concluded, however, that despite improvements in the areas of legislation and awareness raising a restrictive approach to the very concept and practical meaning of positive measures persists in Serbia, as notably reflected in the wording of article 76.3 of the Constitution.

b) In its 2013 Opinion, the ACFC again regretted the contradiction between the wordings of articles 76.3 and 21.4 of the Constitution relating to the issue of positive measures with respect to persons belonging to national minorities and recommended that article 76.3 be aligned with Article 4 FCNM and the recognition of special measures in article 21.4 of the Constitution. It strongly urged authorities at all levels to give rapid and complete follow-up to the findings and recommendations of the Ombudsman, the Provincial Ombudsman and the Commissioner for the Protection of Equality in all cases affecting the rights of persons belonging to national minorities.

4.2. Findings of the 2015 Expert Mission

The experts note that no changes have been made in order to follow-up the recommendations made both by the 2012 Expert Mission and the 2013 AFC Opinion. The above-mentioned Constitutional Court Decision 20/2014 of 16 January 2014 in which the Court declared significant parts of the Law on NMCs to be in violation of the Serbian Constitution as they were considered discriminating against institutions of the majority population, clearly shows that the fundamental principle of international law applicable to persons belonging to national minorities, as enshrined in article 4.2 and 4.3 FCNM,⁷ according to which positive measures adopted with a view to preserving and promoting the rights of persons belonging to national minorities do not constitute acts of discrimination, continues not to be fully

⁷⁷ These provisions read: “(2) The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to a the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

(3) The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.”

recognized and implemented in Serbia. They conclude that imminent action is needed to overcome this situation by amending the Serbian Constitution in such a way as to guarantee its full compliance with Serbia's obligations under applicable international human rights law.

The experts find that there is a strong need for introducing programmes spreading information in all segments of the population, and notably in the civil service and the judiciary, about the compatibility of positive measures with the law on non-discrimination.

The experts also note that while significant progress has been made in the combat against discrimination, there is still need for additional action to be taken with a view to ensuring full and swift implementation of pertinent decisions taken by the Ombudsman, the Provincial Ombudsman (Vojvodina) and the Commissioner for the Protection of Equality.

4.3. Recommendations

- Urgently consider ways and means to amend the Serbian Constitution in such a way as to establish clarity that positive measures are not necessarily to be considered in violation of the constitutional principle of non-discrimination;
- Raise awareness in all segments of the population, and notably in the civil service and the judiciary, that all relevant international standards provide that special/positive measures may be required to promote the full and effective equality between persons belonging to national minorities and those belonging to the majority population and that such measures must not be considered discriminatory as long as they are in conformity with the proportionality principle;
- Ensure that appropriate actions are taken with a view to fully and swiftly implement pertinent decisions taken by the Ombudsman, the Provincial Ombudsman (Vojvodina) and the Commissioner for the Protection of Equality in their work to combat discrimination concerning persons belonging to national minorities, ensure that they have adequate support to perform their tasks efficiently and ensure that they are known to persons belonging to national minorities.

5. Financial support for cultural and other activities of minorities

5.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission strongly criticized the existing system of financing minority activities and proposed the introduction of a system not exclusively based on provision of funds to the NMCs. The experts recommended providing funds for the Councils of Interethnic Relations for projects at municipal level involving more than one national minority. They urged that immediate steps be taken to make the national Minorities Fund operational and to ensure that allocated funding is made without undue delays. Furthermore, they stressed the need to ensure that funds provided to NMCs are used in a transparent way and exclusively for the activities foreseen in the applicable legislation. Finally, the experts emphasized the need for drafting clear criteria for funding and reporting on NMC activities.

b) In its 2013 Opinion, the ACFC invited the authorities to review the existing system of allocating public funds to NMCs with a view to ensuring that it enables all national minorities, in particular numerically smaller ones, to benefit fully from such funding. It found that the National Minorities Fund should be made operational and recommended that

existing funds should be made accessible also to relevant actors, such as NGOs, other than the NMCs.

5.2. Findings of the 2015 Expert Mission

The experts conclude that there is still need to review, in close cooperation with NMC and other stakeholders, the existing system of allocating public funds to NMCs with a view to ensuring that it enables all national minorities, in particular the numerically smaller ones, to benefit fully from such funding. Moreover, they suggest that (additional) funds should be made available to CIERS for projects on municipal level. Such a review should also address issues connected with the National Minorities Fund and proposals that such funds should be made accessible also to relevant actors, such as NGOs, other than NMCs. Finally, the experts call on the authorities to continue their effort to ensure that funding is made in a transparent way and based on clear criteria and that spending of such funds continues to be controlled as to its compatibility with the existing legal framework.

5.3. Recommendations

- Revise the system of financing minority activities and consider introducing a system that is not exclusively based on provision of funds to the NMCs. In particular, consider providing funds to the CIERS at municipal level for specific projects that may involve more than just one national minority;
- Make the National Minorities Fund fully operational, on the basis of clear criteria for the allocation of funding and reporting of activity;
- Ensure that the funds provided for by laws and regulations are transferred without delay;
- Ensure that the funds provided to NMCs are used in a transparent way and exclusively for the activities provided for by the Law. Consider drafting clear(er) criteria for both NMCs and municipalities to be followed in reporting about the use of funds.

6. Tolerance, hate speech and discrimination

6.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission recommended including racist motivation as an aggravating circumstance in the Criminal Code and amending, as appropriate, existing legislative provisions that still hinder effective prosecution of hate speech. They called on the authorities to support existing activities aiming at combating intolerance and continue to collect reliable data as important sources for designing effective policies. Finally, authorities should increase their support, including by financial means, to the work of local CIERS and speed up the establishment of such CIERS in those municipalities meeting the legal requirements where such bodies are not yet in place. Finally, they stressed that the National Council for National Minorities should be made operational.

b) In its 2013 Opinion, the ACFC urged the authorities to intensify their efforts to strengthen interaction between the various communities living in Serbia. Moreover, authorities were to ensure that the criminal justice system adequately addressed hate crime and to intensify their efforts to raise awareness of all relevant actors within this system as to the importance of

prosecuting hate motivated offences.

6.2. Findings of the 2015 Expert Mission

The experts note that the overall situation in Serbia as regards inter-community tolerance is above the average in the region and that while there is no widespread discrimination against persons belonging to those national minorities which are covered by this expert mission. This assessment applies in particular to the situation in Vojvodina. There are, however, instances of hate speech and discrimination. The experts therefore conclude that there is need for continued efforts by the authorities to ensure that the criminal justice system adequately and promptly investigates and, if appropriate, prosecutes and sanctions such acts against National Minorities, including the Bosniak community. The experts welcome that additional CIERS have been established. As they might play an important role, on the municipal level, in combating incidents of intolerance among various communities, the authorities should ensure that they are established in all the remaining municipalities where the legal requirements are met, and accorded the necessary funds to fulfill their tasks.

6.3. Recommendations

- Ensure that the criminal justice system adequately and promptly investigates, prosecutes and sanctions, as appropriate, hate crimes and similar acts;
- Support existing and encourage and resource additional activities aiming at combating intolerance;
- Support, including by financial means, the work of local CIERs and speed up the establishment of CIERs in the municipalities meeting the requirements where such bodies are not yet in place.

7. Religion

7.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission concluded that the Serbian authorities should consider revising the Law on Churches and Religious Communities in order to bring it more in line with the Constitution and the international treaties to which Serbia is a party. Possible amendments may regard the privileged status of the seven traditional churches and religious communities, and religious education. The Serbian Government was also invited to intensify dialogue with the Serbian Orthodox Church, at least to encourage the use of minority languages. More specifically, the experts urged the authorities to support and encourage, within the limits allowed by the principle of separation between State and Churches, dialogue between the Serbian and the Romanian Orthodox Churches as vehicles for potentially easing also the relations between States. In this regard, they held that not only the role of the Committee for Dialogue between Churches already existing within the Vlach NMC might be strengthened, but forms of cooperation could be established between the Vlach and the Romanian NMCs, with a view to elaborating pragmatic solutions to be submitted to the respective Churches allowing for the increasing use of the minority language in services.

b) In its 2013 Opinion, the ACFC again urged the authorities to ensure – while fully respecting the principle of separation between the State and religion - that the right of persons belonging to a national minority to establish religious institutions, organizations and associations is fully guaranteed in both legislation and its implementation. They should also ensure that there was no unjustified limitation of the right of such persons to practice their

religion in their mother tongue.

7.2. Findings of the 2015 Expert Mission

The experts note that there have been no significant changes to the legal situation concerning religious affairs. This applies in particular to the status of the seven traditional churches and religious communities, and the regulation of religious education. The Serbian authorities continue to pursue, based on their understanding of the implications of the principle of separation between State and Churches, a policy of strict “non-intervention” into the internal affairs of the various churches and religious communities, and the relations between them.

While welcoming the respect for the separation of State and religion, the experts wish to emphasize that there are convincing arguments to hold that States are responsible for ensuring that individuals may exercise their fundamental human right, as enshrined in the pertinent provisions of all international human rights instruments, to attend religious services in their mother tongue if they so wish; this assessment is of particular relevance for the situation in East Serbia concerning religious services in the Romanian and Vlach languages. Therefore, the experts re-iterate their call on the Serbian authorities to engage in a constructive dialogue with the Serbian Orthodox Church with a view to finding pragmatic solutions acceptable for all persons and institutions involved.

The experts are pleased to note that the interrelationship between the various religious communities in Vojvodina remain stable and without any significant tensions.

7.3. Recommendations

- Consider revising the Law on Churches and Religious Communities, and/or its implementation, in ways that ensure that members of minority groups may exercise their fundamental human right, as enshrined in the pertinent provisions of all international human rights instruments, to attend religious services in their mother tongue if they so wish;
- Consider intensifying dialogue with the Serbian Orthodox Church with a view to encouraging the use of minority languages in the services.

8. Media

8.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission proposed to include in the legislation an exemption from the requirement of a minimum quota of 50% of programmes to be broadcast in Serbian. The Government and the competent media authorities should verify whether allocated time and resources and especially contents of programmes designed for national minorities are adequate for the needs of a modern multiethnic society. The competent authorities should also explore, for Eastern Serbia, viable compromises such as, for example, allowing import of programmes in Romanian from Vojvodina and improve local production of media offered in Vlach. They should also carefully consider benefits and costs, including in terms of likely politicization, of the prospected creation of six new regional broadcasters; and ensure that the transfer of ownership of minority-language media outlets and control over appointments of editors to NMC does not negatively affect freedom of expression and pluralism within the community.

b) In its 2013 Opinion, the ACFC called on the authorities to take into account the need for sufficient and stable funding to guarantee the viability of media in minority languages and to

review the impact of privatization and the introduction of digital television broadcasting on minority media, in consultation with national minorities. Particular care should be taken to ensure that privatization does not result in a reduction in the offer of broadcasting in minority languages, especially where there may be issues of commercial viability of such broadcasting.

8.2. Findings of the 2015 Expert Mission

The experts note with deep concern that the future of the existing wide-spread and well established system of broadcasting in minority languages, throughout the country but in particular in Vojvodina, is seen by all their interlocutors representing national minorities (with the possible exception of the Hungarian minority in Subotica) as under serious threat by the imminent conclusion of the media privatization process. They are fully convinced by the argument put forward by almost all representatives of national minority media that such privately-run broadcasting will not be economically viable without public support (as up to now accorded by public institutions on the municipal, regional and state levels), due to the often numerically small target-audience for such programmes.

The experts understand that the government is of the opinion that the measures adopted are mandated by the pertinent EU-Directives which the Serbian government wishes to transpose into Serbian legislation by this summer. The experts have been informed that this opinion of the Serbian government is not (fully) shared by all experts in (EU) media privatization law and would, therefore, welcome if experts representing the Serbian government, regional and local authorities as well as representatives of national minorities and the EU would meet and discuss possible solutions. One possibility would be to allow municipalities and other public institutions to continue supporting, to a considerable extent, such broadcasting outlets, be it directly or indirectly, i.e. by increased ear-marked funding of NMCs which, after the conclusion of the privatization process, will be allowed to fund such broadcasting activities but are said to lack the necessary financial and other means such as adequate human resources needed to ensure the survival of good quality broadcasting in minority languages, in particular those spoken by numerically smaller national minorities. Finally, the experts note that the envisaged larger role of NMCs in the field of minority-language media is seen by some actors as potentially threatening freedom of expression and pluralism within the communities concerned. The experts note that there seems to be little awareness, both among officials and persons representing national minorities, about the potential for national minority media offered by the Internet. They consider that it would be useful to raise such awareness, including by programmes allowing the relevant stakeholders to learn from experiences and good practices in other parts of Europe.

8.3. Recommendations

- Consider to revise the existing privatization programme with respect to minority-language media outlets so as to ensure adequate funding of such outlets, be it through NMCs or other institutions, including public bodies on the municipal level;
- Verify whether allocated time and resources and especially contents of programmes designed for national minorities are adequate for the needs of a modern multiethnic society;
- Ensure that the transfer of ownership of minority-language media outlets and control over appointments of editors to NMC does not negatively affect freedom of expression and pluralism within the communities concerned, with such appointments being made in open and transparent competitions with appropriate associated and public criteria;

- Make increased efforts to raise awareness among all stakeholders of the potential offered by the Internet for minority-language media and consider organizing specific programmes dedicated to achieving this goal.

9. Language

9.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission found that there was need to improve the awareness of linguistic rights of persons belonging to national minorities especially in some parts of Serbia, notably in Eastern Serbia. They suggested that this could be achieved by measures such as informing widely about linguistic rights, including the right to obtain certain documents in minority languages; translating important official documents such as municipal charters into minority languages; and promoting a more visible presence of persons belonging to national minorities in the civil service in the affected areas. They also expressed the need for a better and more consistent implementation of the existing legislation throughout the whole territory of Serbia. Authorities should also ensure that the right to use personal names in minority languages was not unduly restricted by territorial limitations. There was also need for increasing the factual possibilities to enjoy the right to use one's language before courts. More specifically, the experts suggested that the authorities – while fully respecting the principle that the ongoing process of standardization of the Vlach language was to be essentially carried out by the persons concerned – should stand ready to offer support for completing this process.

b) In its 2013 Opinion, the ACFC urged 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, in particular in Eastern Serbia and Sandžak, and strongly welcomed the flexibility shown in many municipalities in Vojvodina to allow for the official use of minority languages only in relevant parts of the territory of municipalities. It also recommended promoting the recruitment of civil servants at local level who are proficient in the relevant languages. While it noted the existence of appropriate legislation applicable to registering names in minority languages and as regards the display of topographical indications in minority languages, it stressed the need to intensify efforts to ensure the full and proper application of such rules.

9.2. Findings of the 2015 Expert Mission

The experts feel that there is, overall, only limited awareness of the various and far-reaching linguistic rights enshrined in the existing legislation.

The experts wish to stress the importance of the full implementation of the existing language legislation on the use of minority languages on local level, including in Eastern Serbia and Sandžak. Whereas the situation in Vojvodina, characterized by a most welcome pragmatism allowing for the use of such languages also in parts (settlements) of a larger municipality, does not give rise to any greater concerns, the situation in other parts of Serbia remains worrisome. The same assessment applies to the issue of registering names and receiving official documents in minority languages.

Throughout the country, also in Vojvodina, there is need to step up efforts to recruit additional civil servants and members of the judiciary who are proficient in the relevant minority languages.

9.3. Recommendations

- Improve the awareness of linguistic rights of persons belonging to national minorities especially in the parts of the territory where such awareness is more lacking, notably in Eastern Serbia;
- Carry out a thorough review of relevant legislation and its implementation, with a view to achieving better harmonization among the provisions and to ensuring a more consistent implementation throughout the territory;
- Ensure that the right to use personal names and to receive official documents in minority languages is not unduly restricted;
- Increase the factual possibilities to enjoy the right to use one's language before the courts, including by introducing incentives for judges and other personnel of the judiciary to conduct proceedings and issue documents in minority languages.

10. Education

10.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission urged the authorities to continue efforts to produce quality textbooks for minority language education and to tackle the shortage of qualified teachers, including, as appropriate, through bilateral cooperation with some "kin-States". There was also a need to ensure that information was made available with regard to the right to set up educational programmes in minority languages, including regarding applicable requirements. More specifically, they called for practical solutions concerning the issue of minority language education for Vlachs.

b) In its 2013 Opinion, the ACFC called on the authorities to pursue efforts to ensure that diplomas delivered by educational institutions in the region are duly and rapidly recognized and to continue to support the provision of higher education in Southern Serbia. It also urged the authorities to step up efforts to ensure that the availability of textbooks in minority languages adequately reflects the needs expressed by national minorities and to remove obstacles to the exercise of the right to education in minority languages such as the lack of qualified teachers.

10.2. Findings of the 2015 Expert Mission

The experts conclude that, notwithstanding recent and sometimes considerable improvements, there is still need to increase the availability of good quality textbooks in minority languages and a persisting lack of qualified teachers for instruction in minority languages, in particular those spoken by numerically smaller national minorities. The experts consider that relevant assistance could be provided by "kin-states" and stress that it must be offered and implemented in close cooperation with the competent Serbian authorities on all levels as well as with the national minorities concerned.

The experts note with concern the effects of the general demographic development in Serbia which results in a considerable decrease of the number of pupils in general and of pupils belonging to national minorities in particular. In this context, they strongly welcome the pragmatic attitude prevailing in most of the affected municipalities in Vojvodina where classes with instruction in or of minority languages continue to be offered even if the threshold number of pupils for such classes is currently not met.

The experts took note of reports according to which some pupils from some national

minorities (such as the Albanian and Hungarian) leave school without sufficient knowledge of the Serbian language. This situation negatively affects their successful integration into societal settings, in particular the labour market.

10.3. Recommendations

- Continue efforts to produce quality textbooks for minority language education and to tackle the shortage of qualified teachers, including, as appropriate, through bilateral cooperation with some "kin-States";
- Continue the pragmatic approach shown by many competent authorities regarding the provision of instruction of or in minority languages even if the legal requirements such as a minimum number of students, is currently not met;
- Ensure that all pupils from all national minorities acquire sufficient knowledge of the Serbian language as an essential precondition for their integration into societal settings, in particular the labour market.

11. Participation

11.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The 2012 Expert Mission urged the authorities to step up efforts to guarantee a more thorough implementation of the constitutional principle of "appropriate representation" in the civil service at large and to collect ethnically disaggregated data in this respect. Increased efforts should also be made to establish the Councils for Interethnic Relations in all ethnically mixed municipalities, in line with applicable legislation. Furthermore, they held that it was important to ensure that the National Council of National Minorities met more regularly and adequately fulfill its functions. Authorities should also develop indicators to measure the effectiveness and impact of the work of NMCs, including regarding the use of funds (both those provided by the State budget and those coming from "kin-States"). Finally, they proposed to review the rules regarding the electoral framework for the NMCs with a view to diminishing their over-politicization by considering, for example, introducing provisions on the incompatibility of membership in a NMC with other political functions. Finally, the authorities were invited to consider and implement measures to ensure an improved participation of, in particular, numerically smaller national minorities in the process of political decision-making.

b) In its 2013 Opinion, the ACFC encouraged the Serbian authorities to continue to promote the effective participation of national minorities in electoral processes and to review the existing legislation with a view to ensuring adequate representation of all national minorities, in particular numerically smaller minorities. It reiterated its call on the authorities to take vigorous measures to address the under-representation of national minorities in public administration, particularly at state level, and to increase their efforts to create a multi-ethnic police force. The ACFC strongly urged the authorities to revise the Law on NMCs so as to remove conflicts with other laws; to lay down clear criteria for the transfer of competences to the NMCs; to ensure that conflict of interests between NMCs can be solved on the basis of clear legal criteria; and to clarify the legal provisions governing elections to NMCs. It also stressed that the authorities must abstain from intervening in the internal functioning of NMCs. Finally, it recommended the promotion of the establishment and effective functioning of CIERs at local level.

11.2. Findings of the 2015 Expert Mission

The experts wish to underline that the exact role of the NMCs (their powers, funding and reach of activities) as major institutions for the implementation of the right to effective political participation of persons belonging to national minorities had been considered as being in need of immediate clarification. Therefore, most international and national experts had concurred in calling for swift revision of the relevant legislation. This situation has been seriously aggravated by the January 2014 decision of the Constitutional Court which declared considerable parts of the Law as unconstitutional. Therefore, there is urgent need to finalize the revision process and adopt new and comprehensive legislation.

The experts welcome the information that the recent elections to the NMCs are considered by many interlocutors, both from the national minorities themselves and the authorities, as a success. They note with concern, however, that there seems to persist a serious lack of cooperation and coordination among the various NMCs, aggravated by the fact that state structures foreseen to facilitate such cooperation and coordination still need to be consolidated in order to become fully operational.

The experts find that the authorities should consider reviewing the existing legislation with a view to ensuring increased participation of numerically smaller national minorities in the work of legislative bodies.

The experts re-iterate concerns expressed regarding the persisting lack of appropriate representation of persons belonging to national minorities in public administration, in particular at state level.

The experts join request for the establishment and sufficient funding of CIERs at local level.

11.3. Recommendations

- Finalize as a matter of priority the ongoing legislative work on a new Law on NMCs, taking into account, as appropriate, the pertinent decision of the Constitutional Court and the views of the legitimate representatives of national minorities with a view to overcoming the existing lack of clarity and bringing the future legislation fully in line with applicable international standards;
- Ensure, as a matter of urgency, the establishment of mechanisms improving coordination and cooperation among the various NMCs and the consolidation of relevant administrative structures so they be fully operational;
- Consider ways and means to improve the participation of numerically smaller national minorities in the work of legislative bodies at all levels;
- Step up efforts to immediately and progressively guarantee an improved implementation of the constitutional principle of “appropriate representation” in the civil service at large;
- Make all efforts to establish CIERs in all ethnically mixed municipalities and provide them with the funding to execute their functions and tasks.

12. Restitution of confiscated properties

12.1. Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The expert mission concluded that there was need to swiftly implement the existing legislation on the Restitution of Confiscated Church Property and Restitution of Confiscated Property and restitution; while it was applicable to all acts of expropriation enacted after 9 May 1945, this legislation was of particular relevance for some national minorities and their churches.

b) The 2013 ACFC Opinion did not address the issue of the restitution of confiscated properties.

12.2. Findings of the 2015 Expert Mission

The experts were informed that there are still considerable delays in implementing the applicable legislation of restitution of confiscated properties.

12.3. Recommendation

- Ensure the swift implementation of the applicable legislation on restitution of confiscated properties.

MAIN FINDINGS

As a follow-up to the July 2012 Expert Mission conducted by Rainer Hofmann, Dalibor Jilek, and Francesco Palermo, the authors of the present Expert Report, Anastasia Crickley and Rainer Hofmann, were tasked to focus mainly on the national minorities in Serbia with a “kin-State” in the EU but also to assess the situation of other national minorities such as, e.g. the Albanian or Bosniak national minorities. Their **mandate** did not include, however, the Roma as their legal and factual situation is the subject of specific monitoring and other activities conducted by the EU and other international actors. Their mandate was therefore not to author a comprehensive opinion on all national minorities residing in the Republic of Serbia. In order to fulfil this focused task, the experts met, during their visit to Serbia (23-27 July 2012) with representatives of national and provincial (Vojvodina) administration, local government bodies, several National Minority Councils (NMCs), local Councils for Interethnic Relations (CIERs) and civic associations in various parts of Serbia.

Since the European standards for the protection of the rights of persons belonging to national minorities are primarily set by the 1995 Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM), the experts were invited to use the FCNM provisions as the applicable European **benchmark**; this implied talking into special account the 2013 Opinion of the Advisory Committee on the FCNM. Therefore, this report – as its predecessor in 2012 - mainly follows the structure of the Convention.

The **overall situation** of persons belonging to national minorities in the Republic of Serbia, who, according to the 2011 census, constitute about one sixth of its population, can be assessed as, by and large, satisfactory.

The **legal framework** for the protection of the rights of persons belonging to national minorities had been significantly developed between 2000 and 2010 and results in a rather complex set of norms that, overall, puts the country above the average European standard in this field. While the body of relevant law involves nearly all branches of public law, the essential elements of minority rights protection and enactment in Serbia are contained in four main acts: the Constitution, adopted in 2006, which contains a specific chapter on the rights of persons belonging to national minorities (articles 75-81); the 2002 Law on the Protection of the Rights and Freedoms of National Minorities (Law on National Minorities); the 2009 Law on National Minority Councils (NMC); and the Law on Official Use of Languages and Scripts. This complex set of norms is, however, not free from inconsistencies and contradictions which ought to be addressed by the competent authorities in close contact and cooperation with all stakeholders concerned. This applies, in particular, to the ongoing work on amending the Law on NMCs which is, subsequent to the January 2014 decision of the Constitutional Court in which it declared a number of important provisions of that law to be incompatible with the Constitution, in urgent need to be finalized.

Despite a very well developed legislative and institutional framework, **implementation** of the relevant provisions in practice remains much more limited, although with considerable regional differences between, in particular, the autonomous province of Vojvodina (which is far more advanced in this regard) and the rest of the country. Such persisting shortcomings in implementation have to do with a number of **factors**, including lack of continuity in the allocation of institutional responsibilities for national minorities, insufficient capacity in parts of the administration, especially at local level, but also an overall underdeveloped sensitivity and awareness of minority issues and rights in large parts of the population, including among politicians civil servants at all levels and among minority representatives themselves. One might even say that in Serbia there is a **lack of a generally accepted policy** on issues related to national minorities.

Finally, the strong institutionalization of the minority rights system in Serbia, mostly due to the role played by the NMCs, continues to result in a certain **over-politicization** of national minority issues and might well induce, in a medium-term perspective, **self-isolation** of national

minorities and insufficient interaction among them as well as between them and the majority population.

These persisting **shortcomings** in the general political approach and the overall legislative structure concerning the rights of persons belonging to national minorities, in particular its insufficient implementation, have resulted not only in these deficiencies of a more general nature, but also in a number of specific, subject-matter related problems which are identified in the present report. Moreover, the authors have formulated a (limited) number of recommendations for immediate action and a (larger) number of recommendations for mid- or long-term action which they consider to be conducive to the solution of the shortcomings identified.

In addition to these specific recommendations, the authors of the present Report wish to draw again – as did their predecessors in 2012 – the attention of the Serbian authorities and their EU partners to **six issues of a more general nature** which they invite them to consider with a view to identifying and implementing appropriate solutions to such issues:

1. In order to overcome the above-identified reasons for the persisting deficiencies in properly implementing an overall satisfactory legislative system, the **general approach to minority issues** should be modified and the Serbian society be made more aware of such issues, including the fact that Serbia is a multiethnic State in which also special/positive measures favouring persons belonging to national minorities are needed and justified. In particular, the experts wish to stress that Serbia is in urgent need of discussing and agreeing on the major elements of a comprehensive policy and associated implementation plan in the field of minority issues.
2. Notwithstanding certain positive developments, the present experts consider that the **legal and factual position of the Serbian Orthodox Church** remains, as has been the view of the Venice Commission and the 2012 Expert Mission, disproportionate for a secular State and continues to impact negatively on the so-called Vlach issue. While it is clearly not within their mandate to propose any specific action to be taken by the State authorities in the context of the religious rights of persons belonging to the Vlach community, the present authors also – like their predecessors in 2012 - are of the firm opinion that the Serbian State cannot invoke a position of formal neutrality, based on the argument that such action would interfere with purely internal affairs of the Church, and refrain from any action which would ensure such persons fully to enjoy their freedom of religion.
3. The effects of the imminent conclusion of the process of **privatization of broadcasting outlets** are seen by the representatives of practically all national minorities as a most serious threat to the future existence of what presently constitutes an impressive and highly appreciated system of broadcasting media in the languages of national minorities. It is generally considered as an essential factor in securing the preservation and promotion of the distinct identities of the national minorities concerned. Based on the information available, the experts agree that broadcasting in the languages of (most) national minorities will be, due to the limited number of persons constituting their audience, economically not viable and therefore doomed to fail. Therefore, the experts urge the authorities to reconsider, in close cooperation with all stakeholders and their EU partners, the legislation adopted in order to find ways and means to ensure the future survival of a dedicated broadcasting system in minority languages including by allowing for continued and stable financial support from public budgets such as, e.g., on local and provincial level.
4. Moreover, it seems that **NMCs** have, to a very large extent, captured minority policy and most of the available resources. Notwithstanding that there are some indications that, subsequent to the successful elections in 2014, they have started a somewhat different approach including enhanced cooperation and joint activities, there remains the risk that they perform their tasks in a way that might result rather in an institutionally segregated, parallel development within society than to contribute to an integrated society – the task accorded to them by the

Constitution. Therefore, the authors of the present report invite all stakeholders in Serbia to engage in the presently on-going discussion on reforming the law on the NMCs with a view to agreeing on the ways and means to be adopted in order to ensure that NMCs fully contribute to the creation of a more integrated society.

5. Finally, the authors of the present report wish to emphasize the need that all actors involved, including all “**kin-States**”, fully respect their international law obligations as enshrined, in particular, in the 2008 HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations: While such “kin-States” may have a legitimate interest in contributing to the improvement of the factual situation of their “kins” in other States, such contribution must be offered and implemented in the spirit of good neighbourly relations and in a way that clearly respects the sovereignty of the other State concerned and aims at further improving full integration within its society rather than fuelling its fragmentation.
6. On the other hand, the present authors wish to call on all Serbian authorities to continue their previous policy strictly to **respect the principle of self-identification** of persons belonging to national minorities and, therefore, to refrain from any action which might be considered as siding with one group in identity-related disputes such as among the various components of the Vlach community or between Bunyevtsi and Croats.

RECOMMENDATIONS FOR IMMEDIATE ACTION

1. Discuss and agree on a **comprehensive national general policy and mutual implementation plan** on issues related to the rights of persons belonging to national minorities.
2. Improve **awareness** of the presence of such persons in the country and of their rights, including to special/positive measures as appropriate, among the wider public and civil servants at all levels; constantly review the legislation in order to avoid conflicts of norms; ensure its full **implementation** throughout the country; and establish a stable system of national coordination on minority issues with clearly defined competences and obligations.
3. Consider revising the **Law on Churches and Religious Communities** in order to bring it more in line with the Constitution and the international treaties to which Serbia is a party, including by reviewing the privileged status of the seven traditional churches and religious communities, and the regulations concerning religious education.
4. Consider to revise the **legislation on media privatization** with a view to ensure the future existence of a high-quality broadcasting system in the languages of all national minorities as an essential element for the preservation of their distinct identities including by allowing for adequate, continued and stable financial support from public budgets on local and provincial level.
5. Finalize the reform of the Law on **National Minority Councils**, taking into account the January 2014 decision of the Constitutional Court and the need to ensure the role of National Minority Councils as institutions tasked to enhance integration within society as a whole; reduce the excessive politicization of National Minority Councils, including by considering the introduction of rules on power-sharing systems in the government of a National Minority Council or on incompatibilities such as between membership in a National Minority Council and high political offices; support measures to increase cooperation between State authorities and all National Minority Councils and among National Minority Councils; ensure that all Councils for Interethnic Relations in all ethnically mixed municipalities are established and all conditions for their effective work are fulfilled.
6. Make strong efforts, in cooperation with the EU, the Council of Europe and the OSCE, to achieve solutions to the current disputes with some neighbouring **kin-states** concerning the situation of “kin-minorities” while fully respecting international standards on national minorities in inter-State relations.

MAIN RECOMMENDATIONS FOR MID- AND LONG TERM ACTION⁸

1. Continue the policy of non-interference with regard to the contested **identities** of Bunyevtsi and Vlachs but strongly foster dialogue within these communities as well as with persons belonging to the Croat and Romanian minorities, respectively.
2. Revise the system of **financing minority activities** and consider introducing a system that is not exclusively based on provision of funds to the National Minority Councils; ensure that all funds are transferred without delay and that they are used in a transparent way fully in line with the applicable law.
3. Include **racist motivation** as an aggravating circumstance in the criminal code; ensure the effective prosecution of ethnically motivated crimes and *hate speech* and amend, as appropriate, existing legislative provisions that still hinder effective prosecution of such acts.
4. Intensify **dialogue with the Serbian Orthodox Church** encouraging the use of minority languages in the services where possible and appropriate; while respecting State neutrality in religious affairs, promote dialogue between the Serbian and the Romanian Orthodox Churches on ways to improve language rights of persons belonging to the Vlach community in religious services.
5. Make increased efforts to raise awareness among all stakeholders of the potential offered by the **Internet** for minority-language media and consider organizing specific programmes dedicated to achieving this goal.
6. Improve the awareness of **linguistic rights** of persons belonging to national minorities throughout the whole territory of Serbia; ensure the strict and consistent implementation of all pertinent legislation, including on the right to use personal names and carry out a thorough review of this legislation with a view to considering better coordination among the provisions.
7. Continue efforts to produce quality textbooks for minority **language education** and to tackle the shortage of qualified teachers, including, as appropriate, through bilateral cooperation with some “kin-States”; ensure that information is made available with regard to the right to set up educational programmes in minority languages, including regarding applicable requirements, and that such legislation is duly implemented; continue to allow for pragmatic approaches enabling instruction in minority languages even in situations where the legally required number of pupils is not met.
8. Step up efforts to guarantee a more thorough implementation of the constitutional principle of “**appropriate representation**” in the civil service at large and collect ethnically disaggregated data in this respect; in this context, consider extending preferential criteria for persons belonging to national minorities, including knowledge of a minority language, in the hiring procedures.
9. Organize, in cooperation with the EU, the Council of Europe and the OSCE, regional training seminars on the international standards regarding preferential treatment of “**kin-minorities**” abroad; and increase awareness at local level of the opportunities provided by instruments of territorial cooperation, with a view to make use of them, where appropriate, alongside Serbian borders.
10. Ensure the swift implementation of the applicable legislation on **restitution** of confiscated properties.

⁸ For a more detailed list of recommendations see the respective parts in each section of this report.

Annex

Inter-State Relations

Findings of the 2012 Expert Mission and the 2013 ACFC Opinion

a) The Experts concluded that the existing bilateral cooperation agreements relating to the protection of national minorities should be made operational by ensuring that the joint committees established under them meet more frequently and their potential was fully exploited. They also suggested concluding such agreements with other countries, including Bulgaria.

b) The ACFC noted the existence of a number of bilateral agreements with neighbouring countries and encouraged the Serbian authorities to pursue their efforts with respect to regional co-operation and dialogue.

Findings of the 2015 Expert Mission

While the experts were informed about a considerable intensification of bilateral activities between Serbia and Hungary as well as an increase of support from some “kin-states” such as Croatia, the Czech Republic and Slovakia for their respective “kin-minorities”, tensions persist in the bilateral relations with a number of neighbouring states, notably Bosnia and Herzegovina, Bulgaria and Romania. The experts regret to note that little or no progress has been achieved as concerns the re-vitalization of structures such as joint committees established under exiting bilateral agreements. Furthermore, no additional bilateral agreements relating to national minorities have been concluded. The potential of increasing bilateral and regional co-operation in matters pertaining to national minorities continues to be under-used.

Recommendations

- Step up efforts to conclude bilateral cooperation agreements relating to the protection of minorities with other countries in the region, including Bulgaria and possibly also Albania, Bosnia and Herzegovina, and Montenegro;
- Ensure that the joint committees established by the existing bilateral agreements meet more frequently and their potential is fully exploited;
- Organize, in cooperation with the EU, the Council of Europe and the OSCE, regional training seminars on the international standards regarding treatment of "kin-minorities" abroad;
- Increase awareness at local level of the opportunities provided by instruments of territorial cooperation, with a view to make use of them, where appropriate, alongside Serbian borders;
- Consider to promote, with EU support, a regional “Vlach strategy” addressing issues of common interest to all Vlachs living in the region.