



FORUM ZA ETNIČKE ODNOSI
FORUM FOR ETHNIC RELATIONS

THE FORUM FOR ETHNIC RELATION'S POSITION REGARDING THE DEVELOPMENT OF INTEGRATIVE MINORITY POLICIES¹

- 1. With respect to the composition and number of national minorities territorially concentrated in the border regions of the country, the Republic of Serbia is a highly heterogeneous state, this indicates that minorities and minority policies have an important role to play in good inter-ethnic relations, stability, democratic development and prosperity of Serbia.**

Serbia is under its legal (since 2003) and constitutional set-up determined as a society that respects ethnic diversities. In practice, Serbia is an ethnically fragmented society. It can be compared with an archipelago made up of ethnic islands with no bridges between them. Political life is characterized by trade-offs between the Serb-majority political leaders (government) and leaders of minority political parties taking part in the government. Economic development and satisfaction of social, cultural, educational and other needs of persons belonging to national minorities is left to spontaneous, unplanned development. In recent years, the collective rights and practices for the protection of persons belonging to national minorities have narrowed based on the "principle of reciprocity". The position of national minorities is dependant upon the quality of relations between Serbia and the kin-states of respective national minorities living in Serbia. From 2017 onwards, political leaders of the majority and of some minorities keep reviving ethno-national concept of partition along ethnic lines, which implies the change of present ethno-territorial framework. This is not present only among Serbs and Albanians in Kosovo; it has become a political demand of some political leaders in Serbia (central) and in the region (Bosnia and Herzegovina). Hence, the risk of interethnic tensions and conflicts is growing, as well as the risk for existing territorial framework of Serbia.

An alternative to the current situation is to promote diversity and integration into the society. This requires the performanvce of the following tasks:

- Activate unused resources in favor of integration of minorities and maximize the effects of established examples of good practice;
- Implement the integrative multiculturalism policy and integrative minority policies inferred from it; elaborate and implement related measures and activities of those government authorities that have political, legal, and financial responsibilities for integration of minorities;

¹ The Forum for Ethnic Relations has formulated this position over the years of its work supported by the OSCE Office of the High Commissioner for National Minorities through exchange of opinions, and by the OSCE missions to Serbia and other donors from the EU (Bulgaria, UK and the Netherlands) through projects for promoting interculturalism. The Forum for Ethnic Relations attaches particular importance to cooperation with the Open Society Foundation Serbia. During the period from 2017 to March 2019, the Open Society Foundation Serbia supported the implementation of the following projects: "Mapping of Sandžak", "Monitoring of the internal dialogue on Kosovo", "Advocacy for Developing an Integrative Minority Policy Framework project (June 1st, 2018. till March 31st 2019).

- Active participation of the majority and minorities in advocacy efforts for drafting and adoption of legal acts that are directly or indirectly influencing the position of national minorities while fully taking into consideration international obligations in the area of minority policies, as well as consistent transposition and implementation of the principles of international law, including the EU *acquis*;
- Increase effectiveness of the institutional framework through the strengthening of responsibility and capacities of national and local institutions and minority autonomy focused on effective protection of minority rights;
- Activate the integrative potential of other public policies and incorporate the minority dimension in the minority policies, ensure participation of persons belonging to national minorities in decision-making on the policies related to the issues that are not directly related to their minority position;
- When defining and implementing measures pertaining to the minority policies, it should be taken into account that apart from the old (autochthonous) minorities there are also the so-called “new minorities” formed by persons belonging to constituent peoples of the former Yugoslavia, whose status changed significantly with the dissolution of Yugoslavia. The new minorities are a living bridge of cooperation between countries of the region. Respect for their status and for their rights contributes to better relations between the countries and regional stability, and
- The minority and other public policies should define the position of new minorities (migrants), such as the growing number of Chinese. This requires a revision of existing legislation in many areas, including: citizenship, temporary and permanent residence and the status of foreigners. In doing so, European values embedded in the EU directives should be respected.

2. The Forum for Ethnic Relations recommends that the process of preventing further destabilization of Serbia and its democratic values and institutions should be entered with elaborated strategy of integration of national minorities in the Republic of Serbia.

The first step is to develop and adopt the document that reflects principles and challenges in their implementation on minority policies in practice, which is guided by the values, directions, and mechanisms that would be included in the *Strategy*.

The guiding idea of the *Strategy* is to support and improve all rights and practices that have yielded positive results and which form the foundation of human and minority rights, but also to incorporate relevant amendments, supplements, and innovations that provide answers to new challenges.

The *Strategy* should pay particular attention to the right to minority self-government, which is to be exercised through the institution of national council of national minorities; to the establishment of principles and mechanisms of political representation of national minorities in the National Assembly of the Republic of Serbia, including representation of the national minorities that are entitled to political representation according to bilateral agreements on mutual protection of national minorities; to the representation of national minorities in the bodies of the executive power at all levels; to the clarification and increase of accountability of government authorities and bodies of local self-governments for creation of conditions for and enabling of participation of persons belonging to national minorities in the social life including making of decisions of interest to national minorities and to Serbia as a whole.

Specific tasks that enable the fulfillment of this main task include:

- Harmonization of minority policies in Serbia with the progress of accession negotiations with the European Union, in particular with the progress of negotiation under Chapter 23 and implementation of a dedicated action plan on the protection of national minorities;
- Identification of achievable objectives with regard to the needs and capacities of Serbia, taking into account the EU *acquis*, rules and recommendations of the Council of Europe and the OSCE;
- Encouraging a consensus among relevant stakeholders concerning the need to produce the *Integration Strategy* and their obligation to adhere to that policy in playing their roles in the society;

- Launching an initiative to the National Assembly of the Republic of Serbia and to the Council of the Republic of Serbia for National Minorities to form a political and expert body, which would draft a document (declaration or the like) on the need to prepare and adopt the *Strategy*.

3. The Forum for Ethnic Relations emphasizes the importance of improving normative (constitutional and legal) framework on minorities as one of the basic prerequisites for development of the integrative minority policies.

The existing normative system for protecting the rights and freedoms of national minorities was established fifteen years ago, and due to the fact that the practice has brought numerous new challenges and solutions provided in the amendments to the *Law on Protection of Rights and Freedoms of National Minorities*, the *Law on Use of Languages and Scripts of National Minorities* and the *Law on National Councils of National Minorities*, adopted in 2018, are not in the same spirit of the values established fifteen years ago. It is therefore necessary to proceed with the improvement of the existing constitutional and legislative framework of the Republic of Serbia in order for it to become effective, democratic and integrative.

3.1. Improvement of the constitutional framework

It is important to secure that the issues of importance for the status, identity, and integration of national minorities are regulated on the state level; particularly by the new Constitution and in detail by special laws (a special constitutional or framework law), and/or by a number of laws governing certain areas of exercising of rights of national minorities – official use of a minority language, education of minorities and the like. Some issues can be defined only on the level of principles, whereby lower levels of government should be allowed to regulate certain issues in more detail in their respective acts; taking into account their respective particularities.

Direct amendments of the Constitution in the area of rights of national minorities are also necessary. For example, the Constitution of the Republic of Serbia explicitly mentions national minorities and rights of persons belonging to national minorities in 29 (out of a total of 206) Articles. This points to the fact that a proportionally great number of provisions deal with this problem area. At the same time, this aggravates the identification, linking together and harmonized interpretation of legal norms. Also, the Constitution clashes with the practice of modern constitutions of European Union, which predominantly leave the area of human and minority rights to the framework or sector laws, as well as to regional and international bodies.

It is necessary to ensure the protection of the current level and scope of minority rights based on the principle of acquired rights, which requires effective judicial protection.

The Forum for Ethnic Relations suggests that a new constitution should incorporate the fundamental provisions, principles, and guarantees. In the new constitution, minority rights should be clearly determined as individual rights of persons belonging to national (and other) minorities and, therefore, as collective rights of those national minorities, because persons belonging to minorities can exercise their rights only together with other persons belonging to a national minority.

Protection of the rights of persons belonging to national minorities should be, however, ensured by the adoption of a constitutional law. Such laws are enacted by qualified majority of the National Assembly and by especially guaranteed declaration of representatives of national minorities in the National Assembly, which is simpler and easier procedure than the one for amendment of the actual constitution. However, according to the current Constitution, constitutional law can be enacted only for the purpose of implementing the constitution. That is why, in the process of amendment of the constitution, the option should be introduced whereby the constitutional law should regulate in detail the so-called substantial rights of national minorities and persons belonging to national minorities, and entrust to other laws the elaboration of the manner of exercising of established rights.

3.2. New enhanced legislation on national minorities

It is recommended to use one, coherent constitutional or framework law to regulate the manner of exercising of minority rights guaranteed by the constitution and international agreements. Such codification should include numerous provisions that are, today, contained in the *Law on Protection of Rights and Freedoms of National Minorities*, the *Law on National Councils of National Minorities*, and partially in other laws, including the *Law on Prohibition of Discrimination*, the *Law on Public Information*, the *Law on Culture*, as well as in numerous bylaws (decrees and the like).

Codification should be aimed at the harmonization of legal solutions concerning the contents, procedural and institutional solutions, deadlines, and other characteristics. This enables the implementation of the “guillotine of norms”, or elimination of excessive setting of norms and ceding of numerous solutions (within a clear framework) to the government and local authorities, minority self-government and citizens. This enables clarity and finding way through the texts of the laws. However, this also imposes an improvement to current legal techniques and harmonization of legal terminology.

The new legislation should regulate clear status of national councils as the institutions of true minority self-government. This means that apart from education and culture, national minority councils should have powers regarding the media and the issues of importance to social inclusion and development of national minorities. In special cases, such as Roma, the national council should have powers for other issues like housing, health and social protection. Other areas requiring a new legislative solution are: elections, financing and organization of national councils. It is necessary to clearly define the obligations of government authorities and bodies of local self-government towards persons belonging to national minorities and towards proposals and demands of national councils and towards more efficient procedures before the administration bodies and courts in case of violation of those rights.

The legal framework of integrative minority policies of the Republic of Serbia needs to be harmonized with the *acquis* of the European Union. Therefore, an analysis of the existing laws that are in any way related to the rights of national minorities should be conducted, and their legal and social effects measured. The analysis should determine the level of compliance of the national legislation with the EU *acquis*, standards, procedures and actions for the protection of minority rights.

It needs to be ensured that revised Action Plan for Chapter 23 envisages the new legislation building as mandatory requirement, including a dedicated action plan on the protection of national minorities.

The Forum for Ethnic Relations also recommends establishment of a system for continuous monitoring the implementation of laws, training, and dissemination of information to the public about the implementation. This should become an integral part of the practice and legal culture of all authorities involved in the implementation of laws, as well as of media and non-governmental organizations in the Republic of Serbia. In this context, it is necessary to ensure adequate participation of persons belonging to national minorities at all levels, as well as to elaborate mechanisms that guarantee such participation (for example, guaranteed seat/s of a minority representative in municipal and/or city councils).

On the occasion of any future amendments to the minority legislation, the position of non-citizens who speak a minority language should also be regulated. Additionally, in relation to the protection of the rights of persons belonging to new minorities or migrants, reaching of standards of protection of national minorities should be aspired to, particularly in the individual dimension of minority rights, such as the right to use a mother tongue and development of national culture.

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