Milica V. Matijević

ADEQUATE REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN PUBLIC BODIES

INSTITUTE OF COMPARATIVE LAW
Monograph 203

Belgrade, 2024

ADEQUATE REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN PUBLIC BODIES

INSTITUTE OF COMPARATIVE LAW
Monograph 203

ADEQUATE REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN PUBLIC BODIES

Milica V. Matijević

Belgrade, 2024

Milica V. Matijević
ADEQUATE REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN PUBLIC BODIES
Monograph 203

Publisher
Institute of Comparative Law, Belgrade, Serbia

For the publisher
Professor Jelena Ćeranić Perišić
Director of the Institute of Comparative Law, Belgrade, Serbia

Reviewers
Vladimir Đurić
Principal research fellow at the Institute of Comparative Law, Belgrade, Serbia

Duško Dimitrijević
Principal research fellow at the Institute of International Politics and Economics, Belgrade, Serbia

Dejan Milenković
Full professor at the Faculty of Political Sciences of the University of Belgrade

Aleksandra Rabrenović
Senior research fellow at the Institute of Comparative Law, Belgrade, Serbia

Proofreading
Melina Nikolić

Prepress
Dogma, Belgrade

Print
Birograf Comp d.o.o.

Printed in 100 copies

ISBN-978-86-82582-30-4
DOI:10.56461/M203_24MM

The monograph is a result of research conducted at the Institute of Comparative Law (Belgrade, Serbia) and financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, under the Contract No. 451-03-66/2024-03/200049, 05.02.2024.

© Institute of Comparative Law

ADEQUATE REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN PUBLIC BODIES

Representation of minorities in public bodies is a vital aspect of the participatory rights enshrined in Article 15 of the Framework Convention for the Protection of National Minorities. The inclusiveness of the public sector reflects the degree to which minorities can influence the rules, policies, and practices shaping public life in their countries. Moreover, their participation in public institutions is essential for the realisation of other substantive provisions of the Convention. However, the innovative nature of this aspect of Article 15 has been accompanied by a lack of clear standards, hindering its effective implementation. The study analyses interpretative materials produced by the Advisory Committee on the Framework Convention for the Protection of National Minorities to identify the key criteria used to evaluate compliance with this minority rights obligation. Its objective is to contribute to a more systematic view on the requirements necessary for ensuring adequate representation of national minorities in public bodies.

Milica V. Matijević holds a PhD in law from the University of Florence, an MA from the European Master's Program in Human Rights and Democratisation in Venice, and a law degree from the University of Belgrade. Since 2007, she has been working as a researcher specialising in international human rights law at the Institute of Comparative Law in Belgrade. She has also served as a consultant on EU-funded rule of law projects in Serbia.

TABLE OF CONTENTS:

PART TWO

CASE STUDY
BEYOND PAPER RIGHTS: NAVIGATING MINORITY LANGUAGE USE BEFORE SERBIAN PUBLIC BODIES

INTRODUCTION

The end of the Cold War brought increased recognition of the connection between minority protection and stable peace. In the early 1990s, a series of ethnic wars and the threat of further ethno-national violence led to the fast-track adoption of several international instruments. These initiatives sought to advance a previously neglected area of international human rights law.[1] The first standards were shaped in the Copenhagen Document, adopted in 1990 by the Conference on Security and Cooperation in Europe.[2] The UN Declaration on the Rights of Minorities, another soft law instrument, was completed in 1992, after decades of efforts to establish a global minority rights framework.[3] Minority rights protection became a fundamental element of the process of the democratisation of European states that had once been part of the communist ideological orbit. This trend was particularly evident in the context of European Union (EU) integration. Since the adoption of the "Copenhagen criteria" by the European Council in 1993, respect for and protection of minorities have become an important aspect of the EU's political conditionality agenda.[4]

The significance of minority protection became even greater when in 1994 the Framework Convention for the Protection of National Minorities (hereafter: Framework Convention) was adopted by the Council of Europe (CoE), as the first legally binding regional instrument dedicated to minority rights.[5] With each new wave of enlargement,

[1] More on the origins of the European minority rights regime in: David J. Galbreath, Joanne McEvoy, *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness*, Palgrave Macmillan, 2012, pp. 54-80.

[2] Conference on Security and Co-Operation in Europe (CSCE): Document of the Copenhagen Meeting of the Conference on the Human Dimension, 29 June 1990. The organisation was renamed into the Organization for Security and Cooperation in Europe (OSCE) at the Budapest Summit in 1994, with the change taking effect on 1 January 1995.

[3] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Resolution 47/135, A/RES/47/135, 18 December 1992.

[4] The criterion required from the candidate countries to demonstrate "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities". European Council, Conclusions of the Presidency, Copenhagen, 21–22 June 1993, SN 180/1/93 REV 1.

[5] Framework Convention for the Protection of National Minorities, Europe Treaty Series No. 157, 1 February 1995. The Convention was adopted on 10 November 1994 by the Council of Europe (CoE) Committee of Ministers and it entered into force on 1 February 1998.

the requirements derived from the Framework Convention's minority norms were given more and more weight in EU integrations. Their fulfilment has been closely followed through the process of monitoring candidate states' progress along the accession criteria and became a subject of the European Commission's annual reports. As a result, minority rights criteria have evolved into an important tool of the EU's influence over the domestic policies of candidate states.[6] The monitoring mechanism established in the Framework Convention has had a vital role in this regard.[7] The country-specific opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereafter: Advisory Committee), a body composed of independent minority rights experts, became central to this process. Tasked with assisting the CoE Committee of Ministers in monitoring compliance with the Convention, the Advisory Committee's country-specific opinions emerged as the principal source of information on the progress of candidate countries in meeting minority protection criteria.

Even more importantly, the opinions became the key reference for standards in this field. The question of what, exactly, the European standards for minority protection are has been lingering over the EU integration process, as neither the practice of "old" member states nor the *acquis communautaire* could provide any guidance.[8] Many member

[6] For an analysis of the effects of the EU conditionality on the candidate countries during the first two waves of the post-Cold War EU accessions, see: Gwendolyn Sasse, "Tracing the Construction and Effects of EU conditionality", in: Bernd Rechel (ed.), *Minority Rights in Central and Eastern Europe*, Routledge, 2009.

[7] According to Art. 24, para. 1, of the Framework Convention, "the Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties". Art. 26, para. 1, further stipulates that "in evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities". More on this in: Gaetano Pentassuglia, "Monitoring Minority Rights in Europe: The Implementation Machinery of the Framework Convention for the Protection of National Minorities – With Special Reference to the Role of the Advisory Committee", *International Journal on Minority and Group Rights,* 6(4), 1990.

[8] Wojciech Sadurski, "Minority Protection in Central Europe and Accession to the EU", in: Marc Weller, Denika Blacklock, Katherine Nobbs (eds.), *The Protection of Minorities in the Wider Europe*, Palgrave Macmillan, 2008, p. 211. Similarly critical stance to such situation in: Carter Johnson, "The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe", *International Journal on Minority and Group Rights*, 13(1), 2006. For an analysis of the problems ensuing from the lack of the EU standards on minority protection based on the first-hand experience from the candidate countries, see: Katinka Beretka, Marina Andeva, "The Non-Existing EU Standards in National Minority Protection as Prerequisites for Successful European Integration: The Case of Macedonia and Serbia", AICEI Proceedings, 13(1), 2018.

states have had a complex track record in dealing with their own minorities, and some do not even recognise the existence of ethnic minorities within their borders.[9] Through its supervisory work, the Advisory Committee built its interpretation of the Convention's provisions, successfully filling the gap created by the absence of EU-wide standards.[10] Given the lack of its own standards, the EU has relied on those developed by the Advisory Committee to evaluate the minority protection regimes in candidate countries. This has turned the Council of Europe into a "human rights monitor for Europe's post-communist democracies".[11]

The participatory rights laid down in Article 15 of the Framework Convention have played a special role in monitoring applicant countries' progress toward EU membership. Article 15 imposes an obligation on state authorities to create conditions for the effective participation of persons belonging to minority communities in the social, economic, and cultural life, as well as in the public affairs of a country.[12] Minorities are, as a rule, in a non-dominant position, either at the national or regional level or both, which makes them vulnerable to having their interests overlooked or even encroached upon by the majority population.[13] To address this, participatory mechanisms enabling the involvement of persons of minority origin in broadly defined decision-making processes are regarded as essential for contemporary democracies, both from a human rights and from a security perspective.

For many scholars, Article 15 is one of the most important provisions for minority protection. Annelies Verstichel highlights its fundamental importance, arguing that realisation of nearly every minority right raises the question of the involvement of minorities in the

[9] See, for instance: European Commission, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, COM/2020/620 final, 7 October 2020.

[10] Some authors are optimistic that the minority protection criterion from the enlargement process could lead to the "internationalisation" of minority protection standards withing the EU. See: Gabriel N. Toggenburg, "The Protection of Minority Rights by the European Union: The European Citizens' Initiative as a Test Case", in: Rainer Hofmann, Tove H. Malloy, Detlev Rein (eds.), *The Framework Convention for the Protection of National Minorities*: *The Commentary*, Brill, 2018, p. 52.

[11] Kirsten Shoraka, *Human Rights and Minority Rights in the European Union*, Routledge, 2010, p. 5.

[12] For a comprehensive analysis of the content, objectives, and justification of this right, see: Annelies Verstichel, P*articipation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Intersentia, 2009.

[13] Andreea Cârstocea, "Democracy, Participation and Empowerment", in: Tove H. Malloy (ed.), *Minority Issues in Europe: Rights, Concepts, Policy*, Frank & Timme, 2013, p. 247.

decision-making related to it.[14] Kristin Henrard sees Article 15's participatory rights as essential for combating discrimination and addressing the identity-related needs of national minorities.[15] She considers participation, alongside non-discrimination and identity protection, as a cornerstone of minority protection.[16] Will Kymlica underscores the security objectives behind Article 15. He observes that, at least for now on, its participatory rights have helped temper "demand for more controversial ideas of autonomy and self-government".[17]

An important component of Article 15 has been the one that concerns the participation of minorities in the work of public bodies. It requires states to ensure that minorities have a voice in matters particularly affecting them. However, it also mandates their involvement in shaping societal rules that may appear neutral but could negatively impact minorities due to their distinct identities.[18] The emphasis on effective participation accentuates the importance of creating conditions for an actual impact of persons of minority origin on the content of societal rules, policies, and practices, preventing these from inadvertently disadvantaging their communities.

The interpretative material produced by the Advisory Committee demonstrates that the implementation of this segment of Article 15 requires an *adequate representation* of persons belonging to national

[14] Annelies Verstichel, "Elaborating A Catalogue of Best Practices of Effective Participation of National Minorities: Review of the Opinions of the Advisory Committee Regarding Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities", *European Yearbook of Minority Issues*, 2, 2004, p. 175. For Marc Weller, this right is so fundamental that it is not clear why it was not placed among the first articles of the Convention. Marc Weller, "Article 15", in: Marc Weller (ed.), *The Rights of Minorities. A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, p. 429.

[15] Kristin Henrard, "Tracing Visions on Integration and/of Minorities: An Analysis of the Supervisory Practice of the FCNM", *International Community Law Review*, 13(4), 2011.

[16] Kristin Henrard, "Challenges to Participation in the Name of "Integration": Participation, Equality and Identity as Interrelated Foundational Principles of Minority Protection", in: William Romans, Iryna Ulasiuk, Anton Petrenko Thomsen (eds.), *Effective Participation of National Minorities and Conflict Prevention*, Brill Nijhoff, 2020, p. 79.

[17] Will Kymlicka, "The Evolving Basis of European Norms of Minority Rights: Rights to Culture, Participation and Autonomy", in: Marc Weller, Denika Blacklock, Katherine Nobbs (eds.), *The Protection of Minorities in the Wider Europe*, Palgrave Macmillan, 2008, p. 12. Similarly: Kristin Henrard, "Tracing Visions on Integration and/of Minorities: An Analysis of the Supervisory Practice of the FCNM", *International Community Law Review*, 13(4), 2011, p. 343; Fernand de Varennes, Elżbieta Kuzborska-Pacha, "Effective Participation of National Minorities in Public Life: The UN's Perspective", in: William Romans, Iryna Ulasiuk, Anton Petrenko Thomsen (eds.), *Effective Participation of National Minorities and Conflict Prevention*, Brill Nijhoff, 2020, p. 18.

[18] Kristin Henrard, "Challenges to Participation in the Name of "Integration": Participation, Equality and Identity as Interrelated Foundational Principles of Minority Protection", p. 48.

minorities in public sector bodies. While the Committee occasionally also uses other terms, such as "reasonable representation"[19] and "equitable representation"[20], its core message remains consistent: public bodies of state parties need to mirror all segments of society, including national minorities. A closer examination of the Committee's pronouncements reveals the existence of a distinctive approach to this aspect of Article 15. These pronouncements outline a set of considerations that help define, at least to some extent and with some certainty, the content and scope of the duty. In this study, these considerations are seen as forming an emerging interpretative standard, which we name "the standard of adequate representation of persons belonging to national minorities in public bodies".

Legal theory offers several perspectives on the nature and function of legal standards.[21] William Baude and Stephen Sachs view standards as components of the "law of interpretation"–the pre-existing rules that dictate the legal implications of a legal instrument.[22] For Mark Greenberg, standards are tools for determining the content of the law existing alongside other legal tools performing the same function.[23] David O. Brink cautions that even legal standards require interpretation, which involves an appeal to foundational principles and the meaning of the words used to articulate them.[24] Ronald Dworkin provides an even more elaborate view, defining legal standards as a sum of considerations that courts typically employ when adjudicating a case. These considerations, according to Dworkin, cannot be directly derived from the relevant legal provision but influence a decision by pushing it in a particular direction, even if not decisively. Importantly, a legal standard remains valid even when it does not prevail in a specific decision.

If we apply Dworkin's definition, we can see that the conception of adequate representation, as used in the Advisory Committee's opinions,

[19] See: Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Serbia (4th Cycle), para. 123.

[20] See: Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on North Macedonia, Compilation of Opinions (2nd Cycle), p. 99.

[21] Although these questions are in the legal theory primarily considered in the context of judicial adjudication in the common law systems, given the specific role of the Advisory Committee, one can nevertheless draw useful conclusions.

[22] William Baude, Stephen E. Sachs, "The Law of Interpretation", *Harvard Law Review*, 130, 2017, p. 1084.

[23] Mark Greenberg, "What Makes a Method of Legal Interpretation Correct? Legal Standards vs. Fundamental Determinants", *Harvard Law Review Forum*, 130(4), 2017, p. 114.

[24] David O. Brink, Legal Theory, Legal Interpretation, and Judicial Review, *Philosophy & Public Affairs,* 17(2), 1998, pp. 125-126.

embodies a set of considerations typically used by the Committee when assessing the level of participation of national minorities in the work of public bodies. These considerations cannot be directly derived from the text of Article 15. While they tend to influence the assessment in a concrete way, they, however, remain valid even when not fully followed. The "standard of adequate representation" lacks several elements necessary for a fully-fledged legal standard, partly due to the fact that the Advisory Committee is not a judicial body and that its decisions are not legally binding. However, it could be argued that, given the mandate of the Advisory Committee and the role that this set of considerations plays in its accomplishment, adequate representation approximates, to the extent possible, an interpretative standard.

The nature and the level of completeness of the standard of adequate representation are also constrained by several characteristics of the Advisory Committee's work. The Committee's opinions are context-specific, and it can generally only reflect on the mechanisms already in place in the state parties under consideration. Additionally, the provisions of the Framework Convention are highly interconnected, and the Advisory Committee often addresses similar issues across different articles. For this reason, obtaining a comprehensive view of the Committee's pronouncements on the question of adequate representation of persons of minority origin in public sector bodies can be challenging. Eventually, this aspect of Article 15 is entirely novel in the context of minority rights protection, which is reflected in a notable lack of authoritative judicial pronouncements and scholarly literature on the subject.[25]

In contrast to the standard guiding the participation of minorities in political institutions, the standard of adequate representation of persons of minority origin in public bodies has thus far remained nearly as ambiguous as the obligation it is meant to clarify. This is clearly reflected in the state reports of countries where the Advisory Committee has identified shortcomings regarding the inclusiveness of their public sectors. Efforts of these countries to achieve adequate representation of national minorities often oscillate between superficial

[25] The only judicial pronouncements are those that only remotely address the subject matter of Article 15. See, for instance, the European Court of Human Rights decision in the case *Mile Novaković v. Croatia*. European Court of Human Rights, Application No. 73544/14, Judgment of 17 December 2020. More on this in: Ivana Krstić, "Manjinska prava u praksi Evropskog suda za ljudska prava, *Zbornik radova 36. Susreta Kopaoničke škole prirodnog prava – Slobodan Perović*, 3, 2023, pp. 381-382.

legal and institutional changes and actions as radical as the introduction of employment quotas. This is particularly true for the so-called third-wave applicant countries, where the minority rights criteria have played an especially important role in the EU integration game.[26] The state reports of the Western Balkan candidate countries, such as Serbia, North Macedonia, and Montenegro–whose public sectors have been assessed by the Advisory Committee as inadequately representative of national minorities–show that the standard of adequate representation can be more perplexing than enlightening.

Clearer guidance, as the analysis will demonstrate, is especially needed in situations where ordinary methods fail to bring about the desired outcome and more far-reaching measures are required. A more systematic examination of the Advisory Committee's interpretations is also indispensable for overcoming the limitations of a compartmentalised view of minority rights. The minority rights standards contained in the Convention are so closely interrelated that an analysis focused on a single provision often leads to confusing messages and partial and redundant solutions.

This study analyses materials produced by the Advisory Committee in the course of its monitoring work i.e., its thematic reports and country-specific opinions, to gain a better understanding of what constitutes a satisfactory level of representation of persons belonging to national minorities in public bodies. In other words, we aim to extract the content and scope of the standard of adequate representation from the various fragments of the Advisory Committee's opinion on this matter. The objective is to provide a systematic understanding of this component of Article 15 obligations, which could offer clearer guidance to countries struggling to implement it in practice. In this sense, the study also aims to contribute to improved monitoring of the minority rights implementation and to more effective and consequential oversight of candidate countries' progress in meeting minority protection criteria.

To illustrate the key characteristics of the right to participate in the work of public bodies and the challenges to its implementation, the second part of the book employs a case study method. This section investigates the use of minority languages before public bodies in Serbia.

[26] The EU revised its conditionality policy with regard to the applicant states from the western Balkans (third-wave applicants) in 2000, when the so-called second-generation conditionality (or SAP–stabilisation and association process) was launched.

The Serbian context was chosen as particularly instructive, given that Serbia belongs to the aforementioned group of Western Balkan candidate countries and exhibits their main features regarding the standard of adequate representation. Serbia has received negative opinions on the level of the representativeness of its public bodies in all monitoring cycles conducted thus far. At the same time, the country has made significant efforts to meet the adequate representation standard, driven in particular by the link between the Advisory Committee opinions and EU integration criteria.

The case study provides an opportunity to further explore several important conclusions about the standard of adequate representation reached in the first part of the book. It demonstrates, in a real-life context, how important the standard is for the realisation of both the principle of non-discrimination and the principle of preservation of minority identity. It highlights the causal relationship between the levels of realisation of different provisions of the Convention. The case study also points to the challenges arising from the competing goals of the standard of adequate representation and some other human rights norms. Ultimately, this part of the monograph encapsulates the systemic nature of the failures to meet the standard of adequate representation and the strategies required to address them.

The monograph is structured in the following way. The first part provides an in-depth analysis of the Advisory Committee's interpretations of the segment of Article 15 which concerns the participation of persons belonging to national minorities in the work of public bodies.[27] In the first chapter, we introduce the standard. The second examines its objectives by going beyond the commonly invoked notions of diversity, social inclusion, and fair and democratic governance. The normative nature, content, and scope of the standard of adequate representation are analysed in the third chapter. The fourth chapter explores the main methods for its implementation. The special measures for meeting the obligations arising under the standard of adequate representation are discussed in the fifth chapter. The final chapter of the first part addresses the question of monitoring as a necessary phase in the endeavours

[27] This section of the book is based on the research of best practices for adequate representation of persons belonging to national minorities in the public sector, conducted by the author in the course of the EU-funded Project "Support of affirmative measures related to employment of national minorities in public sector", undertaken on behalf of the GFA Consulting Group and completed in March 2019.

to arrive at the adequate level of representation. The second part of the book is dedicated to a case study of the use of minority languages before public bodies in the Republic of Serbia.[28] In the conclusion, we summarise the main findings of the analysis.

[28] The case study is based on the findings of the research published in the following paper: Milica V. Matijević, Ana Zdravković, "Use of Minority Languages in Administrative Proceedings in Serbia", in: Srečko Devjak, Predrag Dimitrijević (eds.), *Law on General Administrative Procedure: Contemporary Tendencies and Challenges*, Eurosfera & Partners; Institute of Comparative Law; Faculty of Management and Law, 2024.

PART ONE

THE STANDARD OF ADEQUATE REPRESENTATION IN THE OPINIONS OF THE ADVISORY COMMITTEE

1. PRELIMINARY CONSIDERATIONS

Adequate representation of persons belonging to national minorities in public sector bodies is one of the requirements for the realisation of obligations laid down in Article 15 of the Framework Convention, which reads as follows:

> "The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them."

The presence of persons from minority backgrounds in the public sector workforce is one of the necessary conditions for the effective participation of minority communities in public affairs. Whether the level of presence of persons of minority origin among the civil servants and other public sector employees is sufficient for the purposes enshrined in Article 15 should be evaluated against the concept of "adequate representation". Adequate representation of persons belonging to national minorities in the public sector represents a set of rules that specify the conditions which are either necessary or sufficient for meeting the relevant legal obligation prescribed in Article 15. As such, the standard of adequate representation should guide the conduct of the state parties and serve as the minimum benchmark against which their actions are evaluated.

The normative content of the standard is primarily defined in the Advisory Committee's interpretation of Article 15 and of the related articles, as found in its thematic commentaries and country-specific opinions. However, given the nature of the Framework Convention, the answer to the question of what is required to meet the standard of adequate representation of persons belonging to national minorities in public sector bodies has so far remained a mixture of general human rights principles and references to state parties' practices which were positively evaluated in the monitoring procedure. Due to the significant differences in the position, needs, and characteristics of national minorities in European countries, the main intention of the writers of the Framework Convention, as its very name shows, was to lay down the most important principles to be implemented through national

legislation and appropriate governmental policies.[1] Its provisions, including Article 15, are the programmatic legal provisions that set the objectives to be pursued by the state parties in order to secure effective legal and institutional protection of national minorities. As a result, the state parties have a broad margin of discretion in the choice of measures to be used for the implementation of the Framework Convention in the domestic legal order.[2]

This very feature of the provisions laid down in the Framework Convention implies that the Advisory Committee, in its thematic commentaries, cannot go further than to provide only general guidelines on their appropriate implementation. The Advisory Committee cannot request from the state parties to implement concrete measures, no matter how suitable they might be for achieving the Convention's objectives in a given context. In its country-specific opinions, the Advisory Committee can only go so far as to express its preferences by welcoming certain practices and encouraging states to continue with their application, or by criticising other practices as ineffective or contrary to the objectives of the Framework Convention. This is particularly the case with its comments on the implementation of the standard of adequate representation, since the provision of Article 15 is phrased in a language that seems vaguer than the rest of the Convention, leaving the states concerned an even broader margin of appreciation in translating it into domestic legal and policy instruments.[3]

Despite its vagueness, the text of Article 15 is a logical point of departure for any attempt to determine the content and scope of the standard of adequate representation. The Advisory Committee analyses adequate representation in public bodies under the heading of this article, both in its Thematic Commentary No. 2,[4] and in its country-specific opinions. However, the interdependence and interrelatedness of the

[1] Explanatory Report to the Framework Convention for the Protection of National Minorities, European Treaty Series No. 157, 1 February 1995, para. 13, p. 12.
[2] *Ibid*, para. 11, p. 12.
[3] Annelies Verstichel, "Elaborating A Catalogue of Best Practices of Effective Participation of National Minorities: Review of the Opinions of the Advisory Committee Regarding Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities", pp. 166, 194.
[4] Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary No. 2: The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, adopted on 27 February 2008, ACFC/31DOC(2008)001, in: Compilation of Thematic Commentaries of the Advisory Committee, Council of Europe Publishing, First edition, 2013 (further: Thematic Commentary No. 2).

various provisions of the Framework Convention are so great that the normative content of Article 15 cannot be determined without analysing its relationship with other articles of the Convention. The inclusive conception of the notion "participation in public affairs," as laid down in Article 15, makes its provisions foundational for the realisation of other rights of persons belonging to national minorities.[5] Not only does the fulfilment of many other minority rights depend on the participatory rights guaranteed by Article 15, but some of its elements, such as the standard of adequate representation, are at the same time an important indicator of the level of realisation of other rights. This complex interrelatedness is particularly present in its relationship with the Article 4 equality clause and the linguistic rights laid down in Articles 9 to 17 of the Convention. For this reason, the Advisory Committee in its opinions nurtures an "integrated approach" to the standards contained in Article 15, including the standard of adequate representation, with the frequent cross-references to other provisions of the Convention.[6]

The basic elements of the standard of adequate representation of persons belonging to national minorities in public bodies are to be derived from the goal of *de facto* equality or, as referred to in Article 4, paragraph 2, of "full and effective equality between persons belonging to a national minority and those belonging to the majority".[7] The material scope of the standard can only be understood with reference to other provisions of the Convention, particularly those related to the use of languages, given that only through such an integral reading of the Convention it is possible to discern which areas of public life are of special interest to the persons belonging to minority communities. The personal scope, as it is the case with most of the other provisions of the Framework Convention, is to be ascertained through a careful analysis of the relationship between Article 15 and Article 3 of the Convention.

The extent to which the normative content of the standard of adequate representation is determined by the other substantive provisions

[5] *Ibid*, p. 85. See also: Lidija R. Basta Fleiner, "Participation Rights Under the Framework Convention for the Protection of National Minorities (FCNM): Towards a Legal Framework Against Social and Economic Discrimination", *Zbornik radova Pravnog fakulteta u Nišu*, 65, 2013, p. 23.

[6] Annelies Verstichel, "Elaborating A Catalogue of Best Practices of Effective Participation of National Minorities", p. 195.

[7] Thematic Commentary No. 2, para. 28, p. 26. On the concept of effective equality, which is in scholarly literature often referred to also as substantive equality, see: Milica V. Matijević, "Navigating through the Substantive Equality Doctrine: Anti-Discrimination Law and Social Change", *Pravni zapisi*, 15 (1), 2024, pp. 89-120.

of the Convention is particularly visible when one tries to understand its objectives while going beyond the usual declarations about the value of diversity for contemporary democracies.

2. OBJECTIVES BEHIND THE STANDARD OF ADEQUATE REPRESENTATION[8]

2.1 General justification of the standard of adequate representation

In its deliberations on the importance of adequate representation of minority communities in the public sector, the Advisory Committee often uses broad value-laden statements and refers to the values promoted by contemporary liberal democracies. Among these, the most frequently cited is the goal of preserving and enhancing diversity in European societies, which, according to the Advisory Committee, is the general purpose of Article 15, and the goal behind the standard of adequate representation in public sector organisations.[9] The recruitment of persons belonging to national minorities in public bodies should be encouraged as a way to demonstrate the government's commitment to the value of diversity.[10] The adequate representation of members of minority communities in the public sector, as the Advisory Committee notes in the context of Cyprus, should be promoted to ensure that public bodies "to the extent possible, reflect the diversity of society".[11]

This general purpose is then complemented by other similarly broad statements evolving around the goal of social cohesion.[12] Good governance, understood as inclusive governance, is another self-explanatory

[8] Some aspects of this topic were already explored in: Milica V. Matijević, "Towards a Better Understanding of the Standard of Adequate Representation of Persons Belonging to National Minorities in Public Sector", *Strani pravni život,* 63(4), 2019, pp. 19-39.

[9] More on the concept of diversity and its place and role in the contemporary societies in: Cliff Oswick, "The Social Construction of Diversity, Equality and Inclusion" in: Geraldine Healy, Gill Kirton and Mike Noon (eds.) *Equality, Inequalities and Diversity*, Palgrave Macmillan, 2011, pp. 18-32.

[10] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Norway, Compilation of Opinions (4th Cycle), p. 34. For the rest of the section, the name of the Advisory Committee will be omitted in the references to its opinions. See also: Opinion on UK, Compilation of Opinions (4th Cycle), p. 50.

[11] Opinion on Cyprus, Compilation of Opinions (4th Cycle), p. 12.

[12] Thematic Commentary No. 2 para. 1, p. 15.

value used by the Committee as the objective behind the participatory rights established in Article 15. The Committee stresses that the creating of conditions for effective participation of national minorities should be regarded by state parties as an essential component of implementing the principles of good governance.[13]

The references to the goal of securing the fairness of governing structures are also used by the Committee to explain the purpose of participatory rights. Public administration should address the needs of all segments of society, including the specific needs of national minorities. As such, recruitment of persons of minority origin should be encouraged as a way to more effectively respond to their needs.[14] In the Advisory Committee's view, this is closely tied to the need to ensure the genuine legitimacy of public institutions, which can only be achieved if members of minority groups are treated on par with the majority population by accommodating their linguistic and other needs.[15] The fact that public bodies are a place where the rules, policies, and practices for the delivery of public goods are created necessitates that they be representative of society at large i.e., of all its groups, in order to be able to channel the different interests and needs of these groups in such processes.[16] Given the tendency to link human rights with economic goals, which has permeated mainstream human rights discourse in the last two decades, the Committee also points to the role of participatory rights in preventing marginalisation of persons belonging to national minorities from the socio-economic life and, hence, preventing "the risk of losing their contribution and additional input to society".[17]

The effective participation of national minorities in public affairs, including through their adequate representation in public sector bodies, is also frequently linked to the goal of integrating national minorities. The Advisory Committee approaches integration "as a process of social cohesion that respectfully accommodates diversity

[13] *Ibid*, para. 8, p. 19.
[14] Opinion on Finland, Compilation of Opinions (4th Cycle), p. 19. See also: Opinion on the Slovak Republic, Compilation of Opinions (3rd Cycle), p. 95.
[15] National Minority Standards: A Compilation of OSCE and Council of Europe Texts, Council of Europe Publishing, 2007, p. 73.
[16] Some authors explain this by invoking the concept of ethnic bias. See, for instance: Petra Kovac, "Who Benefits? Ethnic Bias and Equity in Access of Ethnic Minorities to Locally Provided Public Services in CEE", paper prepared for the 10th NISPAcee Annual Conference: Delivering Public Services in Central and Eastern Europe: Trends and Developments, 2002.
[17] Thematic Commentary No. 2, para. 9, p. 19.

while promoting a positive sense of belonging for all members of society".[18] To secure the smooth integration of minority groups into the socio-economic life of society, active involvement of members of minority communities is required for the realisation of integration-related strategies and policies.[19] The Advisory Committee also emphasises the significance of adequate representation of the members of minority communities in public bodies at the symbolic level, as they reinforce their sense of belonging to the polity.[20] In the Third Opinion on Serbia, the Advisory Committee notes that where minority groups are largely absent from the state-level administration, especially in areas where they constitute the majority of the population, this not only prevents their integration but also "accentuates their sense that they are ignored or considered only as a problem by the State".[21]

The heightened visibility of public administration makes it a place in which minority languages and cultures need to be especially nurtured, including through the employment of persons from minority backgrounds, if these are to be considered an integral part of society. Conversely, confinement of minority languages and cultures to the private sphere can lead to their marginalisation and isolation, eventually resulting in their assimilation.[22] In contemporary societies, assimilation can often appear as a voluntary process, while, in fact, it is mostly a result of a long period of socio-economic and cultural inequality, to

[18] Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary No. 3: The Language Rights of Persons Belonging to National Minorities under the Framework Convention, adopted on 24 May 2012, ACFC/44DOC(2012)001 rev, in: Compilation of Thematic Commentaries of the Advisory Committee, Council of Europe Publishing, first edition, 2013 (further: Thematic Commentary No. 3), para. 25, p. 17.

[19] Opinion on Hungary (5th Cycle), p. 23. In the "security-track" justifications of the standards on effective participation of minorities in public life, as contained in the Lund Recommendations on the Effective Participation of National Minorities in Public Life (National Minority Standards: Compilation of the OSCE and Council of Europe, Council of Europe Press, 2006, pp. 77-97), integration is firmly linked to the preservation of peace and stability. See: Fernand de Varennes, Elżbieta Kuzborska-Pacha, "Effective Participation of National Minorities in Public Life: the UN's Perspective", in: William Romans, Iryna Ulasiuk, Anton Petrenko Thomsen (eds.), *Effective Participation of National Minorities and Conflict Prevention*, Brill Nijhoff, 2020, p. 26. On the link between the peace and stability see: Milica V. Matijević, Vesna Ćorić Erić, "Peacebuilding and the Conflict Resolution Theories", in: *Twenty Years of Human Security: Theoretical Foundations and Practical Applications*, Fakultet bezbednosti Univerziteta u Beogradu, Institut Français de Géopolitique - Université Paris 8, 2015, pp. 151-162.

[20] On the arguments placed forward by different authors for the representation of historically marginalised groups, including minorities, see: Annelies Verstichel, P*articipation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, pp. 63-63, 70.

[21] Opinion on Serbia, Compilation of Opinions (3rd cycle), p. 86.

[22] Thematic Commentary No. 3, para. 34, p. 22.

which the lack of channels for the effective participation of minorities in public affairs can significantly contribute. With this in mind, the Advisory Committee often argues that the prevention of assimilation requires not only the removal of policies with the assimilatory effect but also the use of positive measures that encourage persons belonging to minority communities to preserve and develop their culture.[23] "The preservation and development of the identity and culture of a person", the Advisory Committee observes, "must be respected and supported not only because of their significant cognitive benefits for the individual concerned but as an important precondition to successful integration in society."[24]

2.2 Principles of equal treatment and non-discrimination

Regardless of how important their rhetorical function is for the minority rights discourse, diversity, social cohesion, and good governance are all political concepts. They can neither explain nor guide the legal interpretation of the standard of adequate representation. To justify a broad interpretation of Article 15 that encompasses the standard of adequate representation, one must refer to the principles of equal treatment and non-discrimination, which legally embody the ideal of equality, as well as their interpretations within the context of other provisions of the Convention. In other words, the concrete objectives behind the standard of adequate representation of persons belonging to minority communities in public sector employment–objectives that can inform its implementation and the assessment of state parties' practices–can only be discerned by examining the relationship between Article 15 and other core articles of the Convention that elaborate on the principles of equal treatment and non-discrimination in the context of minority protection. In fact, the Advisory Committee frequently states that the minority protection standards, as contained in the main articles of the Convention, are aimed at providing for an effective implementation of the principles of equal treatment and non-discrimination in all areas of social life.[25]

[23] According to the Committee, such inequality eventually "leads persons belonging to national minorities to consent to assimilate". *Ibid*, para. 24, p. 17.
[24] *Ibid*, para. 39, p. 25.
[25] *Ibid*, para. 27, p. 19. According to Kristin Henrard, it ensues from the Advisory Committee's thematic commentaries that equality is one of the three "transversal values of minorities' rights to participation". Kristin Henrard, "'Participation', 'Representation' and 'Autonomy' in the Lund

The principles of equal treatment and non-discrimination are elaborated in Article 4, paragraph 1, of the Framework Convention through the guarantees of equality before the law, equal protection of the law, and protection against discrimination:

> "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."

The prohibition of discrimination, in accordance with European standards, embraces the prohibition of both direct and indirect discrimination. Given that prohibition of indirect discrimination, under some circumstances, might require the adoption of positive measures,[26] especially in the context of minority rights protection, this provision is further developed in para. 2 of the same article. The second paragraph lays down the obligation of state parties to adopt positive measures, including affirmative measures, as a means of ensuring *de facto* equality of persons belonging to minority communities:

> "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 the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities."

The last paragraph of the same article clarifies that the measures pursued with the aim of achieving full and effective equality are not to be considered contrary to the general prohibition of discrimination:

> "The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination."

In order to determine the specific objectives of positive measures in the context of minority rights protection, and the main spheres in which these measures could unfold, it is crucial to understand the relationship between Articles 4, 5, and 15. According to the Committee,

Recommendations and Their Reflections in the Supervision of the FCNM and Several Human Rights Conventions", *International Journal on Minority and Group Rights*, 12(2), 2005, p. 62.

[26] Marc De Vos, Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC, European Network of Legal Experts in the Non-Discrimination Field, June 2007, p. 14.

Articles 4, 5, and 15 are "the three corners of a triangle which together form the main foundations of the Framework Convention".[27]

The very purpose of special measures, including affirmative measures, is to provide for effective equality by addressing the needs of members of minority groups which, due to their past discrimination or inherent characteristics, would not enjoy equal treatment under the guarantees of formal equality without such measures. As the Advisory Committee notes in the Fifth Opinion on Armenia, there is often a gap between formal equality and effective equality of persons belonging to national minorities, in comparison to the position of the majority population. This gap is also manifest in the disparity between formal guarantees and their factual representation in the public service.[28] The special needs of persons from minority backgrounds addressed through positive measures are either a consequence of their past or present unequal position with regard to accessing basic public goods compared to the majority population or they ensue from the need to preserve their identity. Namely, the preservation of their identity, being different from the identity of the majority population, often requires additional efforts. This clearly ensues from Article 5 of the Convention, which points to the necessity of not only refraining from assimilationist policies or practices,[29] but also devising positive measures in order to provide conditions for the preservation of the essential elements of the identity of minority communities:[30]

> "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

On the other hand, Article 15 outlines the key ways to address the needs of national minorities to ensure their effective equality with the majority group. For that reason, the Advisory Committee considers Article 15 to be a central provision of the Framework Convention.[31] The participatory rights guaranteed in Article 15 are essential for the full enjoyment of other rights protected by the Convention. They ensure that the concerns of minority community members about their

[27] Thematic Commentary No. 2, para. 13, p. 20.
[28] Opinion on Armenia (5th Cycle), para. 177.
[29] Ar. 5, para. 2.
[30] Thematic Commentary No. 3, para. 24, p. 17.
[31] Thematic Commentary No. 3, para. 84, p. 53.

effective equality and the right to preserve their identity are heard and properly taken into account.[32] In other words, effective participation of persons belonging to national minorities in cultural, social, and economic life and in public affairs is the principal way to ensure conditions for their *de facto* equality with the rest of the population in access to public goods, as well as regarding their identity-related needs. The participation of persons belonging to minority communities in public affairs, through their adequate representation in public sector employment, is indispensable in several ways for the achievement of the goal of effective equality.

Firstly, without adequate representation of persons belonging to minority communities in public administration, the rules, policies, and practices for the provision of public services would be created without their participation, which could result in these rules reflecting only the interests and needs of the majority. One of the consequences of such a situation could be the creation of barriers to equal access to public services for persons of minority origin. The Advisory Committee, in relation to this, observes that the realisation of the socio-economic rights of persons belonging to minority communities is at times hindered by bureaucratic challenges and lack of sensitivity of public bodies to their specific needs and obstacles faced by them in access to public services. It also notes that these difficulties might as well arise from the insufficient capacity of public bodies to meet the specific needs of minority communities and their members.[33] For this reason, as a matter of simple logic, it could be concluded that greater representation of minority communities in public sector bodies could facilitate their better access to public services.[34] This, in turn, could improve the level of fulfilment of the basic socio-economic rights of persons belonging to national minorities and, in the long run, their overall socio-economic position.

Secondly, adequate representation of persons belonging to minority communities in public sector employment serves as an important stronghold of attempts to uproot the discriminatory attitudes and prejudices towards minority groups and *vice versa*. According to the Advisory Committee, when a minority group is underrepresented in the civil service–such as the case with the Roma minority in many European countries and even in areas where it constitutes the majority of the population–this reinforces stereotypes and biases targeting

[32] Thematic Commentary No. 2, para. 15, p. 21.
[33] *Ibid,* para. 37, p. 29.
[34] Opinion on Moldova, Compilation of Opinions (3rd Cycle), p. 68.

them, leading to increased reluctance to employ them.[35] By following this line of reasoning, the Advisory Committee often emphasises the need to support the recruitment of the most marginalised minority groups, such as the Roma, in public administration as a way to improve their image and increase awareness of their culture within the majority population.[36]

Unlike employment in private sector entities, public sector employment is subject to a complex set of merit-oriented requirements, and is under continuous public scrutiny due to its importance for the society at large.[37] The employment of persons belonging to minority communities in public bodies sends a strong message of their equal worth and can also serve as a model for private sector employers. In that way, it facilitates improved access to the labour market for persons of minority origin i.e., a more effective participation of these persons in the socio-economic life of a country.[38] In a straightforward sense, this applies particularly to the regions with high unemployment rates and a significant portion of persons working in the irregular economy, given that, in such areas, the state, as an employer, engages a great part of the labour force and provides salaried and stable employment. Needless to say, greater participation of persons of minority origin in public sector employment has positive effects on the social mobility of members of minority communities.[39]

Thirdly, persons belonging to certain minority groups have specific language-related needs, which require that the effective participation of these persons is ensured within the administration.[40] Language has two important functions. First, it represents an instrument of communication through which persons communicate with public authorities in order to access public services and express their needs. It is also a fundamental element of one's identity.[41] Therefore, the ability to use one's own language has a special place in both the material and the spiritual wellbeing of a person.[42] According to the Committee, the

[35] Opinion on Ukraine, Compilation of Opinions (3rd Cycle), p. 114.
[36] See, for instance, Opinion on the Slovak Republic, Compilation of Opinions (3rd Cycle), p. 96.
[37] Tijana Vukojičić Tomić, "Suvremeni pristupi i modeli zapošljavanja društvenih manjina u javnoj upravi", *Hrvatska i komparativna javna uprava*, 17, 2017, p. 366.
[38] *Ibid*, p. 370.
[39] *Ibid*, p. 370.
[40] Thematic Commentary No. 3, para. 89, p. 56. See also: Opinion on Finland, Compilation of Opinions (4th Cycle), p. 19.
[41] Thematic Commentary No. 3. para. 1, p. 5.
[42] John Packer, "The OSCE High Commissioner on National Minorities: Pyrometer, Prophylactic, Pyrosvestis", in: Nazila Ghanea, Alexandra Xanthaki (eds.), *Minorities, Peoples and Self-Determination*,

realisation of linguistic rights through the adequate representation of persons belonging to national minorities and/or speaking the language(s) of national minorities in public administration is a means to enable their effective participation in the socio-economic life of a society, as well as to preserve and further develop their identity.[43] From this, it results that there are two important language-related objectives behind the standard of adequate representation of persons belonging to national minorities and/or speaking the language(s) of national minorities in public sector bodies: the first regards access to public services; the second the preservation of minority identity.

For members of certain national minorities, access to public services is possible only if these services are provided in their language i.e., if there are civil servants who can provide services in the minority language. In its comments on the relationship between language rights and effective participation in cultural, social, and economic life, the Advisory Committee observes that persons of minority origin more often encounter difficulties in accessing employment, education and training, housing, health care, and other public services. These difficulties are frequently a consequence of the language barriers ensuing from the insufficient command of the official language.[44] The Committee further notes that language-related obstacles to equal access to public goods are even more pronounced in the case of persons who, due to inadequate opportunities for learning a minority language, graduate with only basic skills in that language and, at the same time, lack proficiency in the language of the majority.[45]

The very fact that language is an essential element of identity, and that in order to be preserved, it needs to be practiced in private as well as in public, explains why the goal of the preservation and development of minority identity, as stated in Article 5, paragraph 1, mandates that languages of national minorities are used before public authorities. On numerous occasions, the Advisory Committee has underlined the importance of language as an expression of both individual and collective identity, stressing that the identity of national minorities can be preserved only through the continuous use of their languages.[46] The

Martinus Nijhoff Publishers, 2005, p. 263. For an analysis of various justifications of linguistic rights, with their pros and cons, see: Vanessa Pupavac, *Language Rights: From Free Speech to Linguistic Governance*, Palgrave Macmillan, 2012.

[43] Thematic Commentary No. 3, para. 2, p. 5.

[44] Thematic Commentary No. 2, para. 86, p. 54.

[45] Thematic Commentary No. 2, para. 86, p. 54.

[46] Thematic Commentary No. 3, para. 22, p.16.

Committee has also observed that language rights are meaningful only if they can be exercised in the public sphere.[47]

The use of minority languages before administrative authorities is indispensable for the establishment of an overall environment that encourages their use with the aim to prevent decline in their presence in public life.[48] Regardless of how much attention is devoted to the nurturing of the identity of national minorities through cultural activities, the preservation of their languages is always dependent on the level of participation of persons of minority origin in public affairs and in social and economic life.[49]

The link between the two language-related needs of national minorities and the standard of adequate representation of national minorities in public sector employment has found a direct expression in Article 10, paragraph 2, which reads as follows:

> "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities."

The cited provision provides direct justification for a broad interpretation of Article 15 from which the standard of adequate representation is derived, at least when it comes to public bodies operating in the territory of the local self-governance units that are, traditionally or in substantive numbers, inhabited by national minorities. To make the right to use minority languages in dealings with authorities more effective, the Advisory Committee states that participation of persons belonging to national minorities and/or speaking minority language(s) needs to be ensured within the administration through their recruitment, promotion, and retention.[50]

Although, at first reading, it might sound as if the national authorities were under the obligation to provide the conditions for the use of minority language in dealings with public administration only if persons belonging to minority communities had no command of the

[47] *Ibid*, para. 51, p. 32.
[48] *Ibid*, para. 24, p. 17.
[49] Thematic Commentary No. 2, para. 65, p. 40.
[50] Thematic Commentary No. 3, para. 89, p. 56.

official language, the scope of Article 10, paragraph 2, is actually much wider, and it also encompasses the need to preserve minority languages. According to the Advisory Committee:

> "'Need' in this context does not imply the inability of persons belonging to national minorities to speak the official language and their consequent dependence on services in their minority language. A threat to the functionality of the minority language as a communication tool in a given region is sufficient to constitute a 'need' in terms of Article 10.2 of the Framework Convention. Protective arrangements must be in place to maintain services in the minority language, even if it is not widely used, as it may otherwise disappear from the public sphere."[51]

Although the Advisory Committee often refers to the preservation of linguistic identity of minority groups and the need to provide effective access to public services for members of national minorities who do not speak the official language well enough, as the two distinct goals of the standard of adequate representation, these are, in essence, reflections of the principle of non-discrimination.[52] Persons of minority affiliation should not be exposed to the discriminatory practices that either limit their access to public services or hinder their ability to preserve and develop their own identity, as compared with the majority population. Their underrepresentation in public sector bodies serves as an important indicator that such practices do take place in society. Conversely, their adequate representation in the public sector is a way to achieve both of these goals.[53]

[51] Thematic Commentary No. 3, para. 56, p. 35.

[52] According to the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities "[p]rotection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population". Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Report from the First Session (24 November - 6 December 1947), UN Doc. E/CN.4/52, p. 13.

[53] Similarly: Kristin Henrard, "Challenges to Participation in the Name of "Integration": Participation, Equality and Identity as Interrelated Foundational Principles of Minority Protection", p. 80.

3. NATURE, SCOPE, AND CONTENT OF THE OBLIGATION ARISING FROM THE STANDARD OF ADEQUATE REPRESENTATION[54]

3.1 Nature of the obligation

As already noted, Article 15 is of programmatic character, which means that it leaves the states concerned with a broad margin of discretion *vis-à-vis* its implementation. The state parties to the Convention exhibit a variety of different situations and problems to be resolved, which is the reason why it was necessary to grant them "a measure of discretion in the implementation of the objectives […], thus enabling them to take particular circumstances into account".[55] "A measure that leads to effective participation in one State Party", the Advisory Committee observes, "does not necessarily have the same impact in another context."[56] Consequently, in choosing the measures that should secure efficient participation of persons belonging to national minorities in public affairs *via* their adequate representation in public sector bodies, the state parties should be guided by the objectives behind Article 15.

The wide margin of discretion given to the state parties does not mean that they can meet their obligations under Article 15 by merely attempting to achieve the proclaimed objectives. In other words, the obligation of the state parties arising from the standard of adequate representation is not an obligation of conduct. Even though its provision is to a great extent indeterminate and vague,[57] Article 15 imposes an obligation of result on the states concerned.[58] This means, first and foremost, that "persons belonging to national minorities need practical and effective measures to fill in the gap between formal equality and

[54] Some aspects of this topic were already explored in: Milica V. Matijević, "Adequate Representation of Persons Belonging to National Minorities in Public Sector: The Nature, Content and Scope of Obligations in the Comments of the Advisory Committee for the Framework Convention", *Strani pravni život*, 64(4), 2020, pp. 55-68.

[55] Explanatory Report to the Framework Convention, para. 11, p. 12.

[56] Thematic Commentary No. 2, para. 148, p. 69.

[57] See on this: María Amor, Martín Estébanez, "Council of Europe Policies Concerning the Protection of Linguistic Minorities and the Justiciability of Minority Rights", in: Nazila Ghanea, Alexandra Xanthaki (eds.), *Minorities, Peoples and Self-Determination*, Martinus Nijhoff Publishers, 2005, p. 278.

[58] Tove Malloy *et al.*, Indicators for Assessing the Impact of the FCNM in its State Parties, European Academy Bolzano, 2009, p. 96.

factual representation in the public service."[59] In relation to this, the Advisory Committee warned of the danger of minority representation becoming a box-ticking exercise. In the context of North Macedonia, it stressed that the situation where new civil service employees belonging to national minorities are being hired to meet the minority representation quota without having proper workplaces or job descriptions, or are being paid without reporting to work, does not help increase their effective participation.[60]

The states have a broad margin of appreciation in the choice of means, but the means chosen must be adequate to enable realisation of the state's obligations.[61] Unlike the obligation of conduct,[62] the obligation of result requires the states concerned to achieve, in each and every case, a particular result prescribed by the obligation laid down in a valid norm of international law.[63] A breach of an obligation of result occurs when the result required by the obligation is not achieved.[64] However, upon a more detailed reading of the comments of the Advisory Committee, one can observe that this distinction is often blurred because of the long-term perspective inherent to most of the provisions of the Framework Convention, including the provision of Article 15.[65] For this reason, instead of saying that Article 15 requires from the state parties that the public sector workforce mirrors the ethnic composition of their population, it is actually the case that the state parties are expected to create the conditions, through legislative and policy measures, that would enable the adequate representation of persons belonging to national minorities in public bodies. In other words, the result is achieved when "the conditions for effective participation are in place".[66]

---

[59] Opinion on Armenia (5th Cycle), para. 177.
[60] Opinion on North Macedonia, Compilation of Opinions (3rd Cycle), p. 110.
[61] Special Rapporteur on State Responsibility, James Crawford, Second Report on State Responsibility, A/CN.4/498, 17 March 1999, paras. 60-68.
[62] An obligation of conduct is an obligation through which states are expected to "employ all means reasonably available to them" (*International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Merits)*, para. 430), to "deploy adequate means [and] to exercise best possible efforts" (*International Seabed Mining*, para. 110) in order to realise the objectives laid down in the primary rule.
[63] *International Seabed Mining*, para. 110.
[64] Constantine Economides, "Content of the Obligation: Obligations of Means and Obligations of Result", in: James Crawford, Alain Pellet, Simon Olleson (eds.), *The Law of International Responsibility*, Oxford University Press, 2010, p. 377.
[65] Thematic Commentary No. 2, para. 149, p. 69.
[66] *Ibid*, para. 10, p. 19.

The most suitable legislative and policy measures to achieve this aim will depend on the specific circumstances of the country in question.[67] Primarily, they will depend on the characteristics and needs of the minority community whose representation is to be ensured. As observed by the Advisory Committee in its comment on the relationship between Article 4 and the linguistic rights guaranteed in the Convention, which also sheds light on the relationship between the goal of effective equality and the standard of adequate representation:

> "Article 4.2 clarifies that the principle of equality does not presuppose identical treatment of and approaches to all languages and situations. On the contrary, measures to promote equality must be targeted to meet the specific needs of the speakers of various minority languages. Separate provisions may be necessary for the speakers of languages of numerically smaller minorities to ensure the revitalisation of the language in public life, while other, more widely spoken minority languages, may require other methods of promotion."[68]

The way the standard of adequate representation is to be effectively met is to a large extent determined by the specific features of minority groups and their language needs.[69] Large minority groups predominantly residing in certain regions of a state have an interest in participating in the public affairs of the country as a whole and in having their linguistic rights secured before the public administration operating in the territories where they reside. On the other hand, smaller and dispersed minorities are commonly more concerned with their adequate representation in public bodies which have a direct influence on matters that concern them the most. These could include public bodies responsible for providing public services that such national minorities find particularly difficult to access, or important for preserving their language and culture. In its attempts to provide guidelines on how to meet the standard of adequate representation given the diverse needs of minorities across different European countries, the Advisory Committee rarely provides general and universally applicable remarks. Its guidelines are rather a sort of catalogue of best practices that should serve as a source of inspiration for the state parties in search of solutions which could work in their national contexts.[70]

---

[67] *Ibid.*

[68] Thematic Commentary No. 3, para. 27 p. 19.

[69] Similar: Frank Steketee, "The Framework Convention: A Piece of Art or a Tool for Action?", *International Journal of Minority and Group Rights*, 8, 2001, p.4.

[70] Thematic Commentary No. 2, para. 10, p. 19.

The differences between countries in terms of financial and other resources available for achieving the standard of adequate representation are not considered factors that limit the scope of the obligation established by the standard. Given the long-term perspective inherent in Article 15, if a state has lower financial, institutional, and other capacities and the measure in question is more demanding, this might somewhat soften the tone of the Committee's remarks. However, it could not exempt the country from its obligation. The difficulties in securing adequate resources can also influence the Advisory Committee's expectations regarding the implementation of measures aimed at facilitating the use of minority languages before public administration. This ensues from the very wording of Article 10, paragraph 2, which provides that "the Parties shall endeavour to ensure, *as far as possible*, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities."[71] Its provisions are worded flexibly in recognition of the possible financial, administrative, and other difficulties associated with the provision of administrative services in the minority languages spoken in a state party.[72]

The Advisory Committee's capacity to recognise various difficulties that can arise in relation to the standard of adequate representation also encompasses those ensuing from the economic objectives faced by the state parties, such as the cutbacks in the number of civil servants that could be demanded by fiscal austerity measures. The Committee has also been considerate of the concerns expressed by national authorities that employment-related measures aimed at greater representation of national minorities in the public sector could cause tension and resentment in the countries with high unemployment rates.[73] However, as previously mentioned, this would not affect the content and the scope of obligations arising under the standard, but could for a while render the tone of the Committee's negative opinion less harsh. In the Fourth Opinion on Serbia, the Advisory Committee shows that it is cognisant of the fact that the inefficiency of measures introduced to address the underrepresentation of national minorities in the public sector ensued to a significant extent from the cap on recruitment in the public sector, which is part of the strategy to address the problem of

[71] The emphases added.

[72] Explanatory Report to the Framework Convention, paras. 64 and 65, p. 19.

[73] In this context, the Committee in particular warns against the measures aimed at just formally meeting the adequate representation standard by, for instance, creating posts in order to fulfil the quotas for employment of persons of minority origin in public administration that are otherwise redundant. Opinion on North Macedonia, Compilation of Opinions (3rd Cycle), p. 110.

the country's high public debt. Nevertheless, it again stresses the need to secure greater representation of minorities in Serbian public bodies.[74] In the same vein, in the Fifth Opinion on Sweden, the Advisory Committee does not accept the general shortage of teachers in minority languages as a justification for the lack of minority language teachers. Instead, it invites the national authorities to make this profession more attractive career-wise by investing additional financial resources in training and recruitment of minority language teachers.[75]

3.2 Scope of the obligation with regard to the territorial coverage of a public body

As a general rule, the entire public sector is subject to the obligation stemming from the standard, but to a varying degree and in a different way. Modern European states are characterised by multiple levels of governance. In other words, their public sector is organised at the central, local, and regional level. For this reason, the type of organisation of public administration and the public sector *en general,* and the degree of its decentralisation have a particular place in the Advisory Committee's considerations of a state's accomplishments with regard to the standard of adequate representation. An analysis of its country-specific opinions reveals that the answer to the question of which level of public administration should be the primary target of measures aimed at ensuring adequate representation is guided by three rules:

i. The degree of decentralisation determines which level of public sector should be the primary target of measures aimed at ensuring adequate representation.

This first rule shows that in state parties with a high level of decentralisation, where the local level public administration is given broad powers in the regulation and provision of public services, the Advisory Committee will primarily investigate the degree of the realisation of the standard at the local self-governance level. The Committee held that the country's constitutional structure can significantly influence the level of participation of persons belonging to minorities in public life. Additionally, minority autonomous self-governments can present effective means to promote their participation.[76] Another important

[74] Opinion on Serbia (4th Cycle), para. 78.
[75] Opinion on Sweden (5th Cycle), para. 212.
[76] Thematic Commentary No. 2, p. 14.

matter for the Committee is how much effective decision-making authority has been granted to regional or local-level public bodies. In other words, the degree of application of this rule will also depend on the extent to which they are given the necessary means, including the financial ones, to exercise their powers effectively.[77]

ii. The measures designed to ensure adequate representation should specifically focus on public bodies operating in areas traditionally or predominantly inhabited by national minorities.

Measures aimed at subnational forms of government, including local-level public bodies, are particularly important in the regions where persons belonging to national minorities reside in concentrated communities.[78] Relying solely on the official language can significantly hinder the effective participation of such national minorities in public affairs.[79] This is why the Advisory Committee especially welcomes the efforts to enable use of minority languages in public administration bodies located in areas inhabited by large populations of persons belonging to national minorities.[80] This rule also applies to the central-level public administration bodies located within the given territorial administrative units.

iii. Central authorities should also adhere to the obligation set by the standard of adequate representation.

As the Committee observed in the first-cycle opinion on North Macedonia, regardless of the level of decentralisation of a state's public administration, the decentralisation process does not absolve the central authorities of their overall responsibility for ensuring the participation of minority groups.[81] The segment of the obligation applicable to the central-level public administration is derived from the reading of Article 15 in conjunction with Article 10, paragraph 2. With respect to central administration authorities located in territories inhabited by minorities, state parties are under duty to provide, as far as possible, the conditions that would enable the use of the minority languages in interactions between their employees and members of minorities.[82]

[77] Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 50.
[78] Thematic Commentary No. 2, para. 129, p. 61.
[79] Thematic Commentary No. 3, para. 93, p. 58.
[80] *Ibid*. See also: Opinion on Bulgaria, Compilation of Opinions (1st Cycle), p. 14.
[81] Opinion on North Macedonia, Compilation of Opinions (1st Cycle), p. 71.
[82] See also: Alessia Vacca, *Rights to Use Minority Languages in the Public Administration and Public Institutions: Italy, Spain and the UK*, Giappichelli, 2016, p. 2.

Irrespective of their territorial structure, the central authorities of the state parties should remain dedicated to their overarching responsibility regarding participation of persons of minority origin in various spheres of public life.[83] In general, an adequate level of representation of national minorities in the central-level public bodies is also important for their effective involvement in decision-making processes that address matters of particular interest to them. However, the participation of national minorities in public affairs through their adequate representation in central-level bodies is important not only *vis-à-vis* their specific concerns but also to channel their influence on the broader societal development.[84] Therefore, the Advisory Committee emphasises the importance of ensuring a meaningful level of participation of persons belonging to national minorities in the executive branch.[85] In the Second Opinion on Croatia, the Advisory Committee reproaches the national authorities for the lack of concrete positive measures that would address the shortcomings identified in the representation of minorities in the central-level state administration bodies.[86]

Apart from the abstract pledge to the general importance of participatory rights guaranteed in Article 15, the obligation of adequate representation in central-level public administration is also essential to ensure that concerns of numerically smaller minorities and persons of minority origin living outside areas with traditional or significant minority populations are adequately addressed.[87] In this context, the Advisory Committee primarily points to the position of individuals from the Roma community who, when permanently settled, are often spread across various regions of the country.

3.3 Scope of the obligation with regard to the competences of a public body

The Advisory Committee has repeatedly emphasised that the responsibility to ensure adequate representation of persons of minority origin in public sector employment extends to the entire public sector.[88] This means that the subjects of the obligation are the public

[83] Thematic Commentary No. 2, para. 132, p. 62.
[84] *Ibid*, para. 17, p. 22.
[85] See for example: Opinion on Bosnia and Herzegovina, Compilation of Opinions (1st Cycle), p. 13.
[86] Opinion on Croatia, Compilation of Opinions (2nd Cycle), pp. 21-22.
[87] Thematic Commentary No. 2, p. 13.
[88] Opinion on North Macedonia, Compilation of Opinions (1st Cycle), p. 71.

administration bodies, public bodies and state enterprises providing public services, law enforcement bodies, judiciary, army and other public institutions.[89] The Committee has observed that challenges in different sectors are often interlinked and can amplify each other, which can result in the high level of societal exclusion from socio-economic life.[90] Therefore, the participation of national minorities in the management of public affairs *via* employment-related measures or through other measures that could render public sector bodies more responsive to the needs of national minorities should be provided within the various governmental bodies.[91]

Despite this general rule, the Committee often points to certain fields of activity of public bodies that should be particularly taken into consideration when developing measures aimed at securing adequate representation. In doing so, the Advisory Committee departs from the text of Article 15, which requires states to ensure effective participation in those segments of public affairs that especially affect the rights of national minorities.[92] The identification of these key public sectors primarily follows a catalogue of public services that are essential for the realisation of the linguistic and other rights of persons belonging to national minorities. As outlined in Articles 6 to 14 of the Convention, these include public sector bodies involved in regulation and delivery of media services,[93] administrative services,[94] and education[95].

The need to ensure adequate representation of national minorities is even more accentuated in the Advisory Committee's comments when matters of particular concern to national minorities are entrusted to specialised bodies. The Advisory Committee highly apprises the establishment of such specialised governmental structures within national, regional, or local authorities but seizes every opportunity to

[89] However, when it comes to some of these public bodies, while implementing the standard, a state party needs to be aware of the specificities of their recruitment procedure. For instance, any strategy to secure adequate representation of persons of minority origin in the judiciary needs to be cognisant of the sensitive nature of the judicial appointment procedure, given the principles which govern the appointment of judges and *en general* the position of judiciary. More on these principes in: Ana Knežević Bojović, Milica V. Matijević, Mirjana Glintić, "International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation", in: *Balkan Yearbook of European and International Law 2021*, 2022, Springer, pp. 163-184.
[90] Thematic Commentary No. 2, para. 47, p. 32.
[91] Opinion on Latvia, Compilation of Opinions (1st Cycle), p. 41.
[92] Thematic Commentary No. 2, para. 14, p. 20.
[93] Thematic Commentary No. 2, p 14, para. 141, p. 65.
[94] Thematic Commentary No. 2, para. 160, p. 75.
[95] Thematic Commentary No. 2, para. 161-165, pp. 76-78.

stress the importance of the recruitment and retention of staff with national minority backgrounds in such specialised bodies for their effective functioning.[96]

Equally important, while identifying the fields of public affairs which are the most relevant for the effective protection of minority rights, the Committee is often guided by the special needs of particularly vulnerable minority communities or vulnerable segments of minority communities. The regulation and delivery of health services is a prominent topic in its consideration of sectors in which adequate representation of national minorities might be crucial to realising their specific needs and their effective participation in socio-economic life. As a result of a mixture of factors, such as overt discrimination, low socio-economic status, geographical isolation, language barriers, and cultural differences, persons belonging to certain national minorities face persistent obstacles in their access to health care.[97] From the nature of these obstacles, the Committee draws on the obligation of state parties to ensure that public administration bodies at all levels have sufficient capacity to cater to the specific health-related needs of persons belonging to national minorities. Among the various measures that could be taken in order to overcome such obstacles, measures aimed at the adequate representation of national minorities in relevant public bodies have special importance. As already shown, these measures do not necessarily need to be directed at the employment of persons belonging to minority communities or speaking minority languages, but can also involve raising the overall capacity of public bodies to respond to the special needs of minorities:

> "State Parties should ensure the effective involvement of persons belonging to the minorities concerned in the design, implementation, monitoring and evaluation of measures taken to address problems affecting their health care. […] Medical and administrative staff employed in health services should receive training on the cultural and linguistic background of national minorities, so that they can adequately respond to the specific needs of persons belonging to national minorities. The employment of health mediators or assistants belonging

[96] Thematic Commentary No. 2, para. 104, p. 53. However, the Advisory Committee is of the opinion that minority-related issues "should not remain exclusively in the domain of specialised governmental bodies", and that "the minority perspective needs to be mainstreamed in general policies at all levels and procedural steps by the actors involved in policy-making". Thematic Commentary No. 2, para. 73, p. 43.

[97] Thematic Commentary No. 2, para. 61, p. 38.

to national minorities can contribute to improved communication and more appropriate approaches."[98]

The significance of ensuring adequate representation of persons of minority origin among medical and other healthcare staff is particularly relevant in areas where a significant number of them reside. In order to be able to adequately respond to their needs, the staff engaged in the delivery of healthcare should be able to provide healthcare services in minority languages and be capable of understanding and responding to the specific needs of national minorities ensuing from their cultural and linguistic background.[99]

The same ensues from the relationship between Article 15 and Article 14, paragraph 2, of the Convention, which together lay down a duty of a state to ensure, as far as possible, in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, that they have adequate opportunities to be taught a minority language or to receive instruction in a minority language. Given the importance of language for the preservation and development of the identity of minority groups, the Advisory Committee has repeatedly stressed that state parties should pursue this goal by involving minorities in both the design and implementation of measures aimed at fulfilling the obligation laid down in Article 14, paragraph 2.[100]

To conclude, the standard of adequate representation needs to be observed by state parties especially in those spheres of the public sector that are of particular relevance to the special interests and needs of minority groups. As we have seen, public bodies that are in charge of regulating or providing access to media, health services, education, and administrative services in minority languages are under greater scrutiny when it comes to the realisation of the standard of adequate representation.

[98] Thematic Commentary No. 2, para. 63, p. 39 (footnote omitted).
[99] Thematic Commentary No. 3, para. 88, p. 55.
[100] Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary No. 1: Commentary on Education under the Framework Convention for the Protection of National Minorities, adopted on 2 March 2006, ACFC/25DOC(2006)002, in: Compilation of Thematic Commentaries of the Advisory Committee, Council of Europe Publishing, First edition, 2013 (further: Thematic Commentary No. 1), para. 79, p. 50.

4. THE MAIN METHODS FOR THE REALISATION OF THE OBLIGATION

The goal of meeting the standard of adequate representation of persons belonging to national minorities in public sector bodies can be approached through two broadly defined methods:

> i) by securing adequate employment levels for persons belonging to national minorities in public sector bodies, and
>
> ii) by securing that public services are provided, to the extent needed and possible, in minority languages and that public sector bodies can meet other specific needs of national minorities.

The two methods are to a significant degree interlinked, given that an increase in the level of employment of persons belonging to national minorities represents a fast-forward way to the public services available in minority languages and shaped according to their special needs. For this reason, when discussing the obligation to ensure adequate representation within public administration, the Committee uses the notions "persons belonging to minority community" and "persons speaking minority languages" interchangeably.[101] The Advisory Committee simultaneously speaks about the need to increase the number of persons belonging to national minorities and/or speaking minority languages among the civil servants, as well as about the need to enable the use of minority languages in relations with administrative authorities. The use of minority languages before public authorities is considered a key factor that encourages the involvement of persons belonging to national minorities in public affairs.[102] Nevertheless, it is important to keep in mind that neither the employment-related method nor the method related to the language and other specific needs of national minorities can achieve the standard of adequate representation on their own. Rather, they are two complementary roads for the fulfilment of this objective, which often intersect in their effects and, depending on the size, linguistic characteristics, and other features of a minority group, as well as the territorial organisation of the public sector, can be equally necessary for its realisation. However, prior to their use, the state party needs to make sure that the basic conditions are in place for the realisation of the standard of adequate representation.

[101] Thematic Commentary No. 3, para. 89, p. 56.
[102] Thematic Commentary No. 3, para. 93, p. 58.

4.1 Basic preconditions for the realisation of the obligation

The basic requirement for the creation of a public sector that is representative of all the segments of the population lies in outlawing the practices of direct discrimination.[103] Where the Committee finds that the underrepresentation of minorities in public sector bodies is fully or in part attributed to the occurrence of discrimination, this situation is by default assessed as incompatible with Article 15. While referring to the allegations of discrimination based on ethnic ground in civil service recruitment, the Advisory Committee warned the Croatian authorities that the level of representation of persons belonging to national minorities in public bodies was so problematic that it was not compatible with Article 15.[104] Each state party to the Convention needs to have comprehensive legislation prohibiting discrimination on ethnic ground with a wide scope of application, including access to employment, health care, education, etc. The anti-discriminatory legislation, the Committee often emphasises, needs to be complemented by an adequate institutional apparatus for its implementation and application.

Another basic measure is to ensure that all rules, policies, and practices that have an indirectly discriminatory effect against the chances of persons of minority origin to compete for a position in the public sector are removed. In relation to this, the Advisory Committee first refers to language proficiency requirements. The Committee stresses that these requirements should not limit the access of persons belonging to national minorities to the opportunities for public sector employment by going beyond what is necessary for the post at issue.[105] For instance, in the Third Opinion on Estonia, the Advisory Committee calls for greater flexibility in the implementation of requirements concerning the use of majority languages. The Committee also notes that attention should be given to the actual relevance of Estonian language proficiency in the daily work of civil servants. Moreover, it also states that in locations where the vast majority speaks Russian, the authorities should pay special attention to the Russian-language abilities of civil servants

[103] Thematic Commentary No. 2, para. 33, p. 28.
[104] See: Opinion on Croatia, Compilation of Opinions (1st Cycle), p. 18; Opinion on Croatia, Compilation of Opinions (2nd Cycle), p. 21; Opinion on Croatia, Compilation of Opinions (3rd Cycle), pp. 24-25. Compare with: Opinion on Croatia, Compilation of Opinions (4th Cycle), pp. 9-10; Opinion on Croatia (5th Cycle), paras. 232-237.
[105] Thematic Commentary No. 2, para. 126, p. 60.

while working towards the aim of adequate representation of national minorities.[106] Similarly, in its Fourth Opinion on Cyprus, the Advisory Committee is of the opinion that high-level Greek language exams represent "a gate-keeping device" against the employment of members of the Armenian community in the civil service and in the army.[107] Another barrier to the adequate representation of minority communities, which can lead to indirect discrimination, is typically found in the residency-related requirements that, according to the Advisory Committee, tend to operate to the detriment of Roma communities with a nomadic lifestyle.[108]

The Committee also insists that national authorities should approach the matter of adequate representation through a coherent and comprehensive set of laws and policies that reflect a long-term strategy for achieving and maintaining the standard of adequate representation in public bodies. This is particularly the case in its considerations of what is necessary to achieve a balanced representation of vulnerable communities, such as the Roma.[109] Needless to say, the state parties should undertake all that is necessary for the effective implementation of these laws and policies: to be consistent in their implementation, to provide the financial, administrative, and technical resources for their implementation, etc.[110] Not infrequently, the Committee observes that ambitious plans for the effective participation of national minorities in public affairs are not paired with adequate implementation capacity within governmental structures.[111] The Committee also often notes that progress towards the objectives laid down in national strategic documents directed at the increased representation of national minorities in public administration needs to be adequately monitored in order not to become a dead letter.[112]

4.2 Employment-related method

The employment of persons belonging to minority communities in public sector bodies has constantly been underlined by the Advisory Committee as a key tool for enhancing the participation of

[106] Opinion on Estonia, Compilation of Opinions (3rd Cycle), pp. 37-38.
[107] Opinion on Cyprus, Compilation of Opinions (4th Cycle), p. 12.
[108] Opinion on Ukraine, Compilation of Opinions (1st Cycle), p. 74.
[109] Thematic Commentary No. 2, para. 49, p. 33.
[110] Thematic Commentary No. 2, para. 121, p. 59.
[111] Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 51.
[112] Opinion on North Macedonia, Compilation of Opinions (1st Cycle), p. 71.

minorities in public life.[113] State parties are asked to take the necessary measures to ensure an adequate level of employment of persons belonging to national minorities and/or speaking the language(s) of national minorities in public administration and public services. These measures concern the recruitment but also the promotion and retention.[114]

4.2.1 Recruitment

Recruitment measures aimed at facilitating an adequate level of employment of persons belonging to minority communities and/or speaking minority languages seem to be crucial for meeting the standard of adequate representation. Apart from its importance for the efficient delivery of public goods, the recruitment of future civil servants also has a symbolic significance given that the selection of civil servants is conducted through a complex set of procedures and is subject to public scrutiny, unlike recruitment in the private sector. For this reason, the Advisory Committee expects state parties to put forth "an effort to increase the representation of national minorities and promote multilingualism in the public service".[115] In the opinion of the Committee, "proficiency in the minority language should always be considered *an asset* and, in areas of traditional settlement, even *a requirement* in recruitment procedures for the civil service."[116]

However, the Advisory Committee urges state parties that measures aimed at promoting recruitment of persons belonging to national minorities in public administration should not be directed at the goal of reaching a rigid, mathematical equality in the representation of minority groups.[117] According to its interpretation of the standard, adequate representation in public administration should be implemented genuinely, and persons belonging to national minorities should be recruited "through a merit-based system and according to actual requirements".[118] "Measures which aim to reach a rigid, mathematical equality in the representation of various groups, which could lead to an unnecessary multiplication of posts, should be avoided", the Advisory Committee says, because they risk "undermining the

[113] Tove Malloy *et al*., Indicators for Assessing the Impact of the FCNM in its State Parties, p. 72.
[114] Thematic Commentary No. 1, para. 89, p. 56; Thematic Commentary No. 2, para. 41, p. 30.
[115] Opinion on Moldova, Compilation of Opinions (4th Cycle), p. 25.
[116] Thematic Commentary No. 3, para. 89, p. 56 (emphasis added).
[117] Thematic Commentary No. 2, p. 13.
[118] Opinion on North Macedonia, Compilation of Opinions (4th Cycle), p. 47.

effective functioning of the State structure and can lead to the creation of separate structures in the society."[119]

In order to ensure that recruitment has a real effect on their level of participation and, ultimately, on the shaping of public policies, rules, and practices, the Advisory Committee also asks national authorities to find ways to recruit persons belonging to national minorities into posts of responsibility, especially in the regions where they live in substantial numbers.[120] This means that measures aimed at providing a more inclusive recruitment process should cover not only the entry-level positions but also the more senior grades.[121] While noting its continued progress in the representation of national and ethnic minorities in public service, in the Fourth Opinion on the UK, the Advisory Committee reproaches the national authorities for the decrease in the presence of national minorities at the senior level.[122] In the same opinion, it recommends to the authorities to address this drawback by devising measures to assist the career progression of persons belonging to minorities.[123] The same requirement applies to the presence of persons of minority origin in senior positions within the executive branch of state administration. A positive evaluation in this respect can be found in the Second Opinion on North Macedonia, where the Committee notes with satisfaction that minorities are represented in the managerial structures of most public institutions, such as government bodies, parliamentary bodies, the Broadcasting Council, the Judicial Council, the Constitutional Court, etc.[124]

4.2.2 Retention and career progression

The standard of adequate representation of persons belonging to national minorities in the public sector also encompasses measures aimed at securing the stability of their employment and their career progression on a par with persons belonging to the majority community. The Advisory Committee observes the importance of providing not only equal initial access to public sector employment but also durability

[119] Thematic Commentary No. 2, para. 123, p. 59.
[120] Opinion on Georgia, Compilation of Opinions (1st Cycle), p 15; Opinion on North Macedonia, Compilation of Opinions (1st Cycle), p. 72; Opinion on United Kingdom (4th Cycle), p. 49.
[121] Opinion on North Macedonia, Compilation of Opinions (1st Cycle), p. 71.
[122] Opinion on UK, Compilation of Opinions (4th Cycle), p. 49.
[123] *Ibid.*
[124] Opinion on North Macedonia, Compilation of Opinions (2nd Cycle), p. 97.

of employment.[125] The Committee emphasises that persons of minority origin, both in the private and public sectors, face more often than members of the majority the inequalities in career development, such as a ceiling to the level of their promotion within an organisation.[126] For this reason, measures aimed at sustaining the career progression of persons belonging to minorities should also be an integral part of the package of legal and administrative measures adopted under the heading of Article 15 and its standard of adequate representation.[127]

4.3 Accommodation of language-related and other specific needs of national minorities

This method is closely related to the provisions of the Convention which establish the obligations of state parties to secure adequate conditions for the realisation of linguistic and other rights of national minorities. For instance, training on the special needs of persons belonging to minority communities, as well as on the specific social and economic challenges that affect them more than the majority population, is among these other measures which are not related to employment.[128] In this context, the Advisory Committee also refers to measures aimed at providing easily accessible information and advice on access to public services and welfare institutions in the languages of national minorities.[129]

5. SPECIAL MEASURES FOR THE REALISATION OF THE OBLIGATION

Both types of methods–the one directed at increasing the presence of persons belonging to national minorities among the civil servants, and the one aimed at securing greater capacity of public administration to meet the language-related and other needs of minority communities–can be realised through a wide variety of measures. Some are

[125] Opinion on North Macedonia, Compilation of Opinions (4th Cycle), p. 47.
[126] Thematic Commentary No. 2, para. 32, p. 28.
[127] Opinion on Moldova, Compilation of Opinions (4th Cycle), p. 32.
[128] Thematic Commentary No. 2, para. 38, p. 30.
[129] Thematic Commentary No. 2, para. 40, p. 30.

about the creation of the basic legal, institutional, and administrative conditions necessary for a public sector representative of all segments of society. Others are focused on improving the chances of persons belonging to national minorities to find employment in the public sector.

The final objective of participatory rights laid down in Article 15, including those embodied in the standard of adequate representation, is to provide "full and effective equality between persons belonging to a national minority and those belonging to the majority", as guaranteed in Article 4, paragraph 2. In many instances, neither the formal equality guarantees, which require that members of minority and majority communities should be treated in the same way, nor the prohibition of direct and indirect discrimination will suffice to achieve that objective. As a consequence of their unequal position in accessing basic public goods, which is often the result of past or ongoing discrimination, in many state parties the effective equality of persons belonging to minority communities can only be achieved through a recourse to special measures.[130] Such special measures can be divided into two broad categories: a) special measures aimed at securing the language-related and other identity needs before public bodies; b) affirmative action measures aimed at improving the employment opportunities of persons belonging to minorities that are underrepresented in public sector bodies.

5.1 Measures aimed at securing language-related and other identity needs of national minorities

These special measures can primarily be directed at meeting the needs of minority communities concerning their language or specific elements of their culture and way of life. Through the use of such measures, public sector bodies are made more responsive to the specific needs of national minorities and, hence, come closer to the goals mandated by the provision of Article 15. Among them, the most typical are the measures ensuing from the relationship between Article 15 and Article 10, paragraph 2, of the Convention that prescribes that in certain circumstances state parties should ensure "the conditions which would make it possible to use the minority language in relations

[130] According to the Explanatory Report to the Framework Convention, the goal of full and effective equality laid down in para. 2 of Art. 4, might require "the Parties to adopt special measures that take into account the specific conditions of the persons concerned". Explanatory Report to the Framework Convention, para. 39, p. 15.

between those persons and the administrative authorities". They should enable the use of languages of national minorities before public administration by ensuring that administrative and other public services are provided in the languages of national minorities, that information about public services is provided in these languages, that translation services are available in order to enable written and/or oral communication with public authorities in the minority languages, etc. The review of the country-specific opinions of the Advisory Committee shows that this type of special measures can also be directed at ensuring that public bodies are capable of understanding the specific cultural characteristics of certain minorities and taking due consideration of such characteristics in the provision of public services.[131]

The special measures aimed at meeting language-related and other identity needs of national minorities must be tailored to embrace the differences between minority communities. As noted by the Advisory Committee:

> "Article 4.2 clarifies that the principle of equality does not presuppose identical treatment of and approaches to all languages and situations. On the contrary, measures to promote equality must be targeted to meet the specific needs of the speakers of various minority languages. Separate provisions may be necessary for the speakers of languages of numerically smaller minorities to ensure the revitalisation of the language in public life, while other, more widely spoken minority languages, may require other methods of promotion."[132]

At the same time, the state parties need to strike a balance between the needs of different national minorities as well as between the needs of minority communities and the majority. Firstly, the needs ensuing from the specific cultural practices of national minorities and their lifestyles are subject to limitations arising from the requirements for maintaining public order.[133] Secondly, the special measures need to be in accordance with the proportionality principle also with regard to the diverse linguistic and similar needs of other, especially numerically smaller minorities.[134] Regarding the use of the Frisian language in Germany, the Advisory Committee reiterates that special attention

[131] Thematic Commentary No. 2, para. 63, p. 39.
[132] Thematic Commentary No. 3, para. 27, p. 19.
[133] Explanatory Report to the Framework Convention, para. 44, p. 16.
[134] In the Fifth Opinion on North Macedonia, the Advisory Committee points out that a professional and diverse public sector workforce needs to ensure representation of numerically smaller minorities. Opinion on North Macedonia (5th Cycle), para. 129.

must be paid to the languages of numerically smaller minorities because, in most cases, their survival is particularly threatened.[135] Certain linguistic prescriptions, although enacted for a right cause, may benefit some and disadvantage other minorities in various domains of public life.[136] As a result of limited resources available for the implementation of special measures aimed at securing the standard of adequate representation, it has been observed in practice that national authorities tend to prioritise the needs of more numerous minorities to the detriment of numerically smaller and more dispersed minority communities.[137] For this reason, state parties to the Convention "need to reconcile conflicting linguistic needs, demands and desires […] while recognising and affirming the role of a common language in integrating and solidifying the broader society".[138]

Given that one of the main objectives behind this type of special measures is the preservation and development of language and other essential elements of minority identity, these measures are in effect not supposed to be of temporary character. Since they are spoken and practiced by a minority segment of the population, the minority languages and cultures are under a constant threat of extinction, and their continuous use in public life, including before public bodies, is a way to ensure their preservation and further development. In this sense, the Advisory Committee makes a distinction between measures aimed at meeting the obligations ensuing from concrete rights, such as those guaranteed in Article 5, and the temporary special measures provided under the heading of Article 4, paragraph 2.[139] The non-temporary character of the special measures that should make public administration more responsive to the special linguistic and other needs of national minorities

[135] Opinion on Germany (5th Cycle), para. 216.

[136] John Packer, "The OSCE High Commissioner on National Minorities: Pyrometer, Prophylactic, Pyrosvestis", p. 263.

[137] This is in the first place evident from the position of Roma community, which is in majority of state parties to the Convention exposed to the structural discrimination that often leads to their extreme vulnerability. On the relationship between the structural discrimination and vulnerability of certain groups see: Milica V. Matijević, Ana Zdravković, "Breaking the Invisible Cage: Limits of Law in Structural Discrimination, *Diritto, Immigrazione e Cittadinanza,* 3, 2024, pp. 1-18.

[138] John Packer, "The OSCE High Commissioner on National Minorities: Pyrometer, Prophylactic, Pyrosvestis", p. 263. See also the above-cited interpretation of the Advisory Committee of the right to effective equality in the context of linguistic rights: Thematic Commentary No. 3, para. 27, p. 19.

[139] Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No. 4: The Scope of Application of the Framework Convention for the Protection of National Minorities, adopted on 27 May 2016, ACFC/56DOC(2016)001 (further: Thematic Commentary No. 4), footnote 92, p. 26.

is the main difference between them and employment-related affirmative action measures.[140] As we will see below, another difference ensues from the fact that the first measures are to benefit members of all minority groups with specific linguistic and other identity-related needs, while the beneficiaries of affirmative action measures are only those individuals who belong to the disadvantaged minority groups.

5.2 Employment-related affirmative measures

The second type of special measures that are in a more explicit way related to the obligations ensuing from the standard of adequate representation are those aimed at securing effective equality for persons of minority origin in their access to public sector employment. These special measures are intended to address the specific circumstances of past employment inequalities of certain minorities, including those who are most marginalised.[141] These inequalities are justified either by the existence of direct discrimination or,[142] which is more often the case, the mutually reinforcing barriers to access to the various socio-economic rights, which negatively affect the employment opportunities of members of vulnerable minority groups. The low representation of national minorities in public administration is a strong indicator of the existence of such inequalities. It places a firm obligation on national authorities to devise proactive measures in order to eliminate their negative effects on the level of participation of national minorities in public affairs and the overall level of equality between majority and minority communities.[143]

The Advisory Committee refers to affirmative action measures under the broad heading of "targeted measures"[144], "targeted support"[145], "targeted policies"[146], "targeted schemes"[147], and similar expressions,

[140] The same ensues from the interpretation of this type of special measures provided by the UN Committee on the Economic, Social and Cultural Rights in its General Comment No. 20. See: UN Committee on the Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, adopted on 10 June 2009, E/C.12/GC/20, (further: UNCESCR, General Comment No. 20), para. 9, p. 4.

[141] Thematic Commentary No. 2, para. 125, p. 59.

[142] See for instance, Opinion on Croatia, Compilation of Opinions (1st Cycle), pp. 16, 18.

[143] See, for instance, Opinion on Romania, Compilation of Opinions (1st Cycle), p. 57.

[144] Thematic Commentary No. 2, para. 125, p. 3.

[145] Thematic Commentary No. 3, para. 87, p. 28.

[146] Opinion on Ukraine, Compilation of Opinions (2nd Cycle), p. 104.

[147] Opinion on Kosovo*, Compilation of Opinions (3rd Cycle), p. 61 (This designation is without prejudice to positions on status, and is in line with the UN Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo Declaration of Independence).

which all point to an active effort to improve the employment opportunities of communities that are underrepresented in public bodies. In its First Opinion on Montenegro, the Advisory Committee expressly instructs the responsible authorities to set up targets and employment guidelines in this respect.[148] The Committee also employs the terms "positive measures" and "positive action", where the latter is in accordance with the terminology used in the EU Racial and Employment Equality Directives.[149]

Although there is no generally accepted definition of the legal concept of affirmative action, either in international or national laws,[150] while in the common usage the term takes on a wide variety of meanings,[151] in effect only the second type of measures belongs in the true sense to the category of affirmative action.[152] This clearly flows from the working definition of affirmative action developed in the report on the concept and practice of affirmative action prepared by the UN Special Rapporteur Marc Bossuyt, according to whom:

> "Affirmative action is a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality."[153]

According to the report, affirmative action measures are of a temporary character and "always directed to a certain target group composed of individuals who all have a characteristic in common on which their membership in that group is based and who find themselves in

[148] Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 48.

[149] Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (published in OJ L 180 of 19 July 2000). Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (published in OJ L303 of 2 December 2000). More on the EU law and positive measures in: Milica V. Matijević, Vesna Ćorić, "Anti-diskriminacione mere u okviru Evropske unije", in: Jovan Ćirić (ed.), *Pedeset godina Evropske unije*, Institut za uporedno pravo, Kancelarija za pridruživanje Evropskoj uniji, 2007, pp. 98-116.

[150] UN Sub-Commission on the Promotion and Protection of Human Rights, Comprehensive Examination of Thematic Issues Relating to Racial Discrimination: The concept and practice of affirmative action (Preliminary report submitted by Mr. Marc Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5 Corrigendum), 8 August 2000, E/CN.4/Sub.2/2000/11/Corr.1, para. 6, p. 3.

[151] Some of which can also cover the first type of special measures, as per typology used in this study.

[152] More on the different terms used to refer to these measures in: Milica V. Matijević, Vesna Ćorić Erić, "Mere afirmativne akcije: Terminološko određenje i uvodna razmatranja o sadržini pojma", *Strani pravni život,* 54(3), 2010, pp. 85-102.

[153] UN Sub-Commission on the Promotion and Protection of Human Rights, Comprehensive Examination of Thematic Issues Relating to Racial Discrimination: The concept and practice of affirmative action, para. 6, p. 3.

a disadvantaged position".[154] Unlike affirmative action measures, as previously mentioned, special measures related to the linguistic and similar needs of national minorities are generally not meant to be of a temporary character, nor are they to be used only in relation to the groups that are socio-economically disadvantaged.

This distinction between the special measures aimed at preservation and development of minority language and other elements of minority identity and those aimed at improving the chances of persons belonging to national minorities to find employment in the public sector is even more accentuated in an often-cited definition according to which affirmative action measures are:

> "measures attempting to increase the participation of particular groups defined in group terms, such as race, gender, or disability, in those contexts in which those groups are regarded as under-represented".[155]

Even though the concept of affirmative action is extremely complex and ambiguous and, in practice, includes a wide variety of measures,[156] the distinction between measures that do belong to the category of affirmative action and those that are of special character but do not fall under the same category is important in order to understand the limits of the first and second category of measures. While both target specific groups and are expressions of what the Advisory Committee calls "active efforts" to meet the standard of adequate representation,[157] only the second category is subject to the limitations typical for affirmative action.

5.2.1 Limitations with regard to the scope and content of affirmative measures

According to the interpretations of the concept of affirmative action provided in the case law of the international judicial institutions and in the commentaries of major human rights bodies, special

[154] *Ibid*, para. 8, p. 3.

[155] Cristopher McCrudden, Sacha Prechal, The Concepts of Equality and Non-Discrimination in Europe: A Practical Approach, European Commission, 2011, p. 38. Similarly, Colm O'Cinneide is of the opinion that "the term "positive action" is best understood as including any form of proactive action designed to benefit a disadvantaged group, and therefore can cover a huge variety of policies and initiatives". See: Colm O'Cinneide, "Positive Action and the Limits of Existing Law", *Maastricht Journal of European and Comparative Law,* 13, 2006, p. 354.

[156] UN Sub-Commission on the Promotion and Protection of Human Rights, Comprehensive Examination of Thematic Issues Relating to Racial Discrimination: The concept and practice of affirmative action, para. 114, p. 25.

[157] Opinion on Georgia, Compilation of Opinions (1st cycle), p. 15.

measures falling into the category of affirmative action need to be designed and applied in a way that would ensure their specificity, temporariness, and coherence.[158] The legal provisions providing for the use of affirmative action measures need to be precise, and the measures can be considered legitimate "to the extent that they represent reasonable, objective, and proportional means to redress *de facto* discrimination".[159] They also need to be discontinued when the goal of effective and full equality in practice has been achieved.[160] In other words, such measures "[should] not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality".[161]

However, the ambiguity surrounding the interpretation of the terms "reasonable, objective and proportionate" makes the question of what is to be considered a lawful scope and content of affirmative measures controversial, both in theory and in practice. In many instances, affirmative action measures are perceived to be in sharp conflict with the principle of equal treatment, which is the foundational principle of the modern legal systems.[162] The Advisory Committee, in its observations on what makes the main difference between lawful and unlawful affirmative action, uses the indeterminate term "adequate". The term has already found its place in the Explanatory Report to the Convention, which states that:

> "Such measures need to be "adequate", that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality."[163]

In its attempt to elaborate on the term "adequate", the Advisory Committee says that the objective of affirmative measures should not be the rigid proportionate representation that is achieved through a mathematical operation of calculating the percentage of posts in public administration to be filled by persons of minority origin according

[158] As summarised in: Ann F. Bayefsky, "The principle of Equality or Non-discrimination in International Law", *Human Rights Law Journal,* 11, 1990, pp. 26, 27.
[159] UN Committee on the Economic, Social and Cultural Rights, General Comment No. 20, para. 9, p. 4.
[160] *Ibid*.
[161] Explanatory Report to the Framework Convention, para. 39, p. 15.
[162] Hugh Collins, "Discrimination, Equality and Social inclusion", *Modern Law Review,* 66, 2003, p. 16.
[163] Explanatory Report to the Framework Convention, para. 39, p. 15.

to the percentage of these persons in the general population.[164] Not only would this often be impossible given the existence of many different minority groups but, according to the Committee, that would also be against the principle of equality before the law. The Advisory Committee notes that affirmative measures that are designed in such a way could be discriminatory both towards persons belonging to the majority community and towards other minorities.[165] Yet, on a number of occasions, particularly in countries with a tangible underrepresentation of persons belonging to minority communities in the civil service ranks, the Advisory Committee often calls on the authorities to undertake comprehensive and appropriate measures in order to ensure proportional representation.[166] In the Fourth Opinion on Serbia, for instance, the Advisory Committee "underlines the utmost importance of the proportionate representation of national minorities in the public administration".[167]

Rather, the goal of affirmative measures should be pursued by making sure that the recruitment system is merit-based and aligned with the actual requirements of the post to be filled.[168] According to the Committee, in implementing targeted measures designed to address the specific inequalities in employment practices suffered by some minorities, national authorities should nonetheless ensure that all employees are adequately trained and competent to perform their work efficiently.[169]

In that sense, the goal of equitable representation in public sector employment is to be understood "in a flexible way",[170] as a goal of laying down *conditions* for the effective presence of persons belonging to a national minority in public administration, which can provide their effective participation in the shaping of public policies, rules, and practices in accordance with their special needs. The principal way in which their effective presence in the public sector workforce can be secured is by giving due consideration to those skills that could secure

[164] Thematic Commentary No. 2, pp. 13, 59. See also the Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 48.

[165] In its Opinion on Bosnia and Herzegovina in the first monitoring cycle, the Advisory Committee notes that measures excluding persons belonging to certain national minorities from accessing public posts are potentially discriminatory: Opinion on Bosnia and Herzegovina, Compilation of Opinions (1st cycle), p. 9.

[166] See, for instance, Opinion on Croatia (5th Cycle), para. 237.

[167] Opinion on Serbia (4th Cycle), para. 127.

[168] Opinion on North Macedonia, Compilation of Opinions (4th Cycle), p. 47.

[169] Thematic Commentary No. 2, para. 125, p. 59-60.

[170] Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 48.

the use of minority languages before public sector bodies and the capacity of these bodies to respond to other specific needs of minority groups.[171] Contrary to its generally cautious approach towards quotas, in its Fourth Opinion on Serbia, the Advisory Committee even suggests that one of the possible measures for providing effective minority representation in the executive can be to designate a certain number of posts to be filled by minority representatives.[172]

The beneficiaries of affirmative action need to be defined in an objective and precise way. The more vulnerable the group is, the more justified the use of affirmative measures becomes. When urging national authorities to promote better representation of Roma at all levels of decision-making, including in public administration, the Advisory Committee recalls the Recommendation on the policies for Roma/Travellers in Europe, adopted by the Committee of Ministers in 2008.[173] In the given document, Council of Europe member states are encouraged to "consider amending their national legislation in an appropriate manner in order to enable positive action aimed at overcoming particular disadvantages experienced by Roma and/or Travellers and at giving equal opportunities for Roma and/or Travellers in society".[174]

5.3 The most typical best-practice examples of the affirmative measures

Similar to the first type of special measures–those aimed at securing that public administration is representative of different minority communities by being able to accommodate their linguistic and other identity-related needs–most affirmative measures also evolve around their specific language, socio-economic, and cultural characteristics. The main question is how to make sure that national minorities do not have a disadvantaged position in competitions for public sector employment. State parties typically approach this question in a twofold way.

Firstly, certain types of affirmative measures are designed with the aim of countering the opportunity-limiting effects that are the consequence of the past discrimination suffered by national minorities or

[171] *Ibid.*

[172] Opinion on Serbia (4th Cycle), para. 125.

[173] Opinion on Bulgaria, Compilation of Opinions (2nd Cycle), p. 16; Opinion on Hungary, Compilation of Opinions (3rd Cycle), p. 46.

[174] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe, adopted on 20 February 2008, part VII (II) (i).

stem from their lower ability to speak the official language. The use of these measures is directed at the creation of, what is in theory called, "a level playing field". Such affirmative measures, which are considered to be the least controversial because they do not directly challenge the equal treatment principle, are primarily related to the use of language. An example of these measures, as found in the Fourth Opinion on Serbia, would be to facilitate the learning of the official language by applicants or personnel of minority origin that would allow them to compete for public sector jobs and promotions.[175] When interpreting the provisions of Article 15, the Advisory Committee notes that when language proficiency is a valid requirement for employment in the public service, language training courses should be provided to prevent discrimination of persons of minority origin.[176] The rationale behind these measures is that effective equality between minority and majority groups cannot be achieved if the primary characteristic of persons of minority origin–that they have been raised in a minority language environment, which has decreased their chances to master the knowledge of the official language to the level necessary for competing for a civil service job–has not been taken into account. According to the Committee, language courses and, if needed, tailored support should be provided prior to enforcing language requirements as a way to promote learning of the official language and prevent discrimination or insufficient participation by applicants or staff of minority origin.[177] This does not apply solely to the recruitment process, but should also cover retention and career progression in the public sector. Otherwise, as noted by the Advisory Committee in the Fourth Opinion on Cyprus, language exams would continue to function as a barrier for members of minority groups.[178] The training support aimed at increasing the participation of minority communities in public administration does not need to be provided exclusively in the field of languages but can also cover some other skills that would increase the chances of their members being recruited for a position or retaining public sector employment.[179] In its Opinion on Montenegro, the Advisory Committee recommends that the body in charge of developing

[175] Opinion on Serbia (4th Cycle), para. 125. More on the public sector recruitment in Serbia in: Aleksandra Rabrenović, Milica V. Matijević, "Izazovi procesa zapošljavanja državnih službenika u zemljama zapadnog Balkana", in: Jelena Ćeranić, Vladimir Čolović (eds.), *Sećanje na dr Jovana Ćirića – putevi prava*, Institut za uporedno pravo, 2023, pp. 333-348.
[176] Thematic Commentary No. 2, para. 55, p. 36.
[177] Thematic Commentary No. 3, para. 87, p. 55. See also: Opinion on Sweden (5th Cycle), para. 161.
[178] Opinion on Cyprus, Compilation of Opinions (4th Cycle), p. 12
[179] Opinion on Serbia, Compilation of Opinions (2nd Cycle), p. 82.

training programmes for civil servants should give special attention to the training needs of persons of minority origin, both for recruitment into public administration and for in-service training.[180] As it ensues from the Advisory Committee's Fourth Opinion on the UK, the specific training developed for leadership could also be necessary to remedy the underrepresentation of minorities in the public sector.[181] Recommendations to develop special training and retraining programmes for applicants and employees of minority origin also often go hand in hand with proposals to provide state scholarships for persons from insufficiently represented minority groups.[182]

Another type of affirmative measures found in the country-specific opinions are those that should ensure greater presence of persons belonging to minority communities by making the public sector inclusive enough to embrace persons who speak minority languages. As expected, this can be achieved primarily by lowering language-related requirements. As already noted, the Advisory Committee expects state parties to remove any excessive requirements of proficiency in the official language(s) for access to certain positions that may unduly restrict their access to employment.[183] The Advisory Committee, on the other hand, welcomes the national practices of introducing differentiated language requirements for civil service employment for applicants belonging to national minorities.[184] In the same vein, it often criticises national authorities because their civil service recruitment system does not "accommodate applicants that bring other languages and skills, such as through the application of different standards in the evaluation of tests".[185]

[180] Opinion on Montenegro, Compilation of Opinions (1st Cycle), p. 48. See also the Opinion on Georgia in the first monitoring cycle in which the Advisory Committee "welcomes the setting up in 2006 of the Zurab Zhvania School of Public Administration, which is intended to train managers and public servants from national minorities, providing them with, *inter alia*, intensive Georgian lessons": Opinion on Georgia, Compilation of Opinions (1st Cycle), p. 15.

[181] Opinion on UK, Compilation of Opinions (4th Cycle), p. 49.

[182] See: Opinion on Spain (5th Cycle), para. 187; Opinion on Germany (5th Cycle), para. 216; Opinion on Croatia (5th Cycle), para. 236.

[183] Thematic Commentary No. 3, para. 87, p. 55.

[184] Opinion on Cyprus, Compilation of Opinions (1st Cycle), p. 19.

[185] Opinion on Moldova, Compilation of Opinions (4th Cycle), p. 25. See also the Advisory Committee's Opinion on Latvia in the first monitoring cycle in which it asks the authorities to "increase their efforts to promote civil service recruitment of persons belonging to national minorities inter alia by adopting a more flexible approach to the language requirements set out in this field and to the monitoring of their implementation". Opinion on Latvia, Compilation of Opinions (1st Cycle), p. 41. The Committee raises the same opinion in relation to Estonia, where it underlines that, apart from being applied in a flexible manner, due attention should be paid to the actual relevance of the language requirements in the daily work of the civil serv-

The goal of adequate representation of persons of minority origin in public sector employment can also be pursued by tailoring recruitment conditions in accordance with the Advisory Committee's reasoning that fluency in the minority language should consistently be seen as an advantage and, in regions traditionally or in greater number inhabited by minorities, even as a necessary requirement to be met by the candidates for civil service employment.[186] According to the Committee, recruitment policies favouring candidates with minority language proficiency are a lawful way of enhancing minority participation in public administration.[187] In order to overcome the disadvantage faced by members of minorities and ensure their equal access to the civil service, in the Fourth Opinion on Cyprus, the Advisory Committee recommends that the authorities develop innovative approaches to the problem, such as the awarding of additional points in the recruitment process for the knowledge of other languages.[188] Similarly, in the context of the shortage of Frisian language teachers, the Advisory Committee advises the German authorities to introduce more ambitious positive measures, including considering the knowledge of Frisian as a merit in public recruitment procedures.[189] However, as always emphasised by the Committee, in order to be lawful, such affirmative action measures should be tailored in a way that preserves the merit principle in the process of recruitment.[190]

Affirmative action measures that give advantage to persons who *speak minority languages* in the recruitment process or throughout career progression are also a good way to avoid the pitfalls of the grounds-led approach to discrimination. Namely, most of the grounds that should provide special protection for the groups that face, more often than others, direct and indirect forms of discrimination, including "minority origin", disregard the complexity of the social identity of an individual.[191] This can be best illustrated by the phenomenon of multiple affiliations, which can be a consequence of, among others, mixed marriages or state succession.[192] Or, we could refer here to the example

ants and employees of other public bodies: Opinion on Estonia, Compilation of Opinions (3rd Cycle), p. 38.

[186] Thematic Commentary No. 3, para. 89, p. 56.

[187] Thematic Commentary No. 2, para. 160, p. 75.

[188] Opinion on Cyprus, Compilation of Opinions (4th Cycle), p. 12.

[189] Opinion on Germany (5th Cycle), para. 216.

[190] Opinion on North Macedonia, Compilation of Opinions (4th Cycle), p. 47.

[191] See on this: Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity", *Queen's Law Journal,* 19, 1993, p. 181.

[192] According to the Advisory Committee, multiple affiliation is quite a common phenomenon. Commentary No. 3, para. 18, p. 13.

of persons who have retained only basic elements of minority identity, such as a personal name, but have lost more substantial aspects of minority identity, such as knowledge of language.[193] The measures that give preference to persons belonging to national minorities solely because of their minority origin, without paying due attention to the extent to which these persons are capable of contributing to the preservation and development of minority languages and other elements of minority identity could eventually betray the very basic objectives inbuilt in Article 15. According to the Advisory Committee, the effectiveness of minority participation in the context of Article 15:

> "[…] cannot be defined and measured in abstract terms. When considering whether participation of persons belonging to national minorities is effective, the Advisory Committee has not only examined the means which promote full and effective equality for persons belonging to national minorities: it has also taken into account their impact on the situation of the persons concerned and on the society as a whole. This impact has qualitative and quantitative dimensions […]."[194]

6. MONITORING

Although the Advisory Committee does not interfere with the choice of measures for the implementation of the standard of adequate representation, it nonetheless remains firm in its insistence that the measures chosen need to be adequate and implemented in an efficient manner. Once the state authorities undertake concrete steps to increase the level of representation of minority communities, they are also under duty to regularly monitor their implementation and, what is more, their effectiveness.[195] For this reason, the Advisory Committee often reminds state parties that, once they introduce special measures for better representation of persons belonging to minorities in state administration and public services, they also need to think of the appropriate monitoring mechanisms.[196]

[193] According to Annelies Verstichel, effective participation of minorities "presumes that persons belonging to minorities share certain characteristics, interests and a certain perspective": Annelies Verstichel, Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits, p. 81.
[194] Thematic Commentary No. 3, para. 18, p. 22.
[195] Opinion on Croatia, Compilation of Opinions (2nd Cycle), p. 21.
[196] Opinion on Moldova, Compilation of Opinions (3rd Cycle), p. 67.

An indispensable precondition for that is data collection. Since the beginning of its mandate, the Advisory Committee has called on various state parties to regularly collect data on the representation of minorities in the public sector,[197] given that only in that way can they have a comprehensive view of the situation and the directions for further action.[198] Comprehensive data and statistics–as the Committee observes in an opinion on Serbia–are crucial for the monitoring and evaluation of the impact of recruitment, promotion, and other related practices aimed at increasing the level of participation of minority communities in public bodies.[199] In effect, as observed in the Fifth Opinion on Armenia, the targeted positive measures cannot even be designed if there is no prior assessment of the situation in the field i.e., if a baseline is not identified prior to their implementation.[200] This means, as the Committee noted in the Fifth Opinion on Romania, that before the implementation of a legal or policy measure and monitoring of its effects, it is necessary to evaluate the needs and set the targets.[201] Equally important, regularly collected data is also needed for the periodic adjustment of measures and strategies. Article 15 imposes on state parties the duty of progressive realisation, which means that the measures and strategies should be periodically reviewed to ensure linear progression towards the goals set in its provision.

In the Thematic Commentary No. 2, the Advisory Committee provides the basic parameters for proper data collection. The data collection methods should be fully aligned with international standards for personal data protection and designed and implemented with the obligatory involvement of minority representatives. While collecting data, the authorities need to make sure that the right of persons belonging to national minority to freely choose whether to be treated or not as such is fully observed.[202]

Monitoring needs to be conducted in a regular and systematic manner. In its Fourth Opinion on Montenegro, the Advisory Committee reproaches the state authorities for using only a survey with a sample rather than data covering all segments of the state administration, as well as for the fact that the data collected did not show in which

[197] See: Opinion on Hungary, Compilation of Opinions (4th Cycle), p. 27.
[198] See: Opinion of Hungary (5th Cycle), para. 161.
[199] Opinion on Serbia (4th Cycle), para. 125. See also: Opinion on Croatia, Compilation of Opinions (2nd Cycle), p. 21.
[200] Opinion on Armenia (5th Cycle), para. 177.
[201] Opinion on Romania (5th Cycle), para. 146.
[202] Thematic Commentary No. 2, para. 127, p. 32.

areas of the public sector the individuals work and at what professional level.[203] The monitoring procedures themselves also need to be regularly reviewed in order to ensure their alignment with professional standards and efficiency, which means that the indicators should be clearly set and periodically re-evaluated.[204]

Since the beginning of its mandate, as already noted, the Advisory Committee has insisted that state parties should ensure constant monitoring and evaluation of their actions concerning minority participation. However, a number of states that have ratified the Framework Convention do not collect disaggregated equality data on the situation of minority communities. This is commonly a consequence of the fact that the gathering of data on ethnic affiliation is not allowed by law, such as in Finland, or the population census, for some other reason, does not include the collection of data on ethnic ground.[205] These national authorities try to overcome such limitations by, for instance, conducting surveys, preparing *ad hoc* thematic reports focusing on particular aspects of the position of minority groups, or carrying out other types of studies in order to gain deeper knowledge of the barriers faced by minority communities *vis-à-vis* their participation in public life. Nonetheless, the Advisory Committee stresses that regular, systematic, and comprehensive data collection is indispensable for gaining deeper insight into the specific challenges faced by members of minorities in various fields of public life.[206] On the other hand, in the case of Denmark, which also does not collect data on ethnicity and whose authorities, for instance, use this as an explanation for the absence of specific policies for the Roma minority, the Advisory Committee takes a bit more flexible approach.[207] There, the Committee states that census data is not "a necessary prerequisite for taking specific measures with a view to achieving effective equality" and that an in-depth understanding of the needs and interests of minority groups "can also be achieved through qualitative research and effective participation of persons belonging to the community concerned

[203] Opinion on Montenegro (4th Cycle), para. 153.
[204] Opinion on Serbia (4th Cycle), para. 126.
[205] Opinion on Finland, Compilation of Opinions (4th Cycle), p. 19.
[206] Opinion on Finland (4th Cycle), paras. 34, 35.
[207] According to the information contained in the Fifth Opinion, the Danish Central Population Register includes information on place of birth and citizenship, which is used by the authorities to form statistical categories which refer to "Immigrants and descendants of immigrants of Western origin" and "immigrants and descendants of immigrants of non-Western origin", and these categories raises a number of human rights issues. See: Opinion on Denmark (5th Cycle), paras. 39-43.

in decision-making".[208] At the same time, and in the same context, the Committee observes that, in the absence of official data collection, it is not in a position to establish the number of people who freely self-identify as persons belonging to minority groups and that official statistics cannot be replaced by unofficial statistical data collected by civil society organisations.[209] In the case of Germany, the Advisory Committee has demonstrated particular understanding for the lack of data on ethnic affiliation in light of the "misuse of ethnic data during the Nazi period", and recommended that the national authorities seek alternative means to obtain reliable statistics on national minorities.[210] When comparing these statements with the Committee's pronouncements given in some other national contexts where it insists on the collection of ethic data disaggregated along a number of different variables,[211] its approach to this matter looks rather patchy and inconsistent. Ultimately, the lack of comprehensive and quality statistics on the ethnic affiliation of the population seriously affects the capacity of the Advisory Committee to carry out its role.[212]

[208] Opinion on Denmark (6th Cycle), para. 79.
[209] Opinion on Denmark (5th Cycle), footnote 5, p. 7.
[210] Opinion on Germany (1st Cycle), para. 23.
[211] Such as the case, for instance, with Serbia in the context of which the Advisory Committee insisted that the authorities collect comprehensive data on the representation of national minorities in public administration at all levels. See: Opinion on Serbia, Compilation of Opinions (3rd Cycle), p. 87. See also the Advisory Committee's recommendations on data collection in Croatia and Montenegro.
[212] See, for instance, the case of Estonia in which the Committee refers to the circumstantial evidence when assessing the proportion of persons belonging to the Russian minority in the public sector. Opinion on Estonia, Compilation of Opinions (4th Cycle), p. 18.

PART TWO

CASE STUDY

BEYOND PAPER RIGHTS: NAVIGATING MINORITY LANGUAGE USE BEFORE SERBIAN PUBLIC BODIES

1. INTRODUCTION

The legal guarantees of the right to use minority languages in public life have been a part of the Serbian legal framework since World War II.[1] During the socialist period, the equal status of languages of majority and minority groups was guaranteed in all public domains.[2] The right to use one's own language before public bodies was an important aspect of the equality of languages spoken in Yugoslavia, which was granted by the constitution and elaborated upon in a number of laws and bylaws.[3] After the dissolution of Yugoslavia, the use of minority languages was subject to further legislative interventions, which were a consequence of an increased relevance of minority protection standards in the EU integrations. Not less importantly, this was also necessitated by the fact that Serbia was suddenly faced with the need

[1] Some legal guarantees also existed in the pre-WWII period, such as the right to primary education in the languages of Hungarian, Slovak, Romanian, and Ruthenian minorities in the Kingdom of Yugoslavia. Savet za prosvetu i kulturu NR Srbije - AP Vojvodine, Podaci o ostvarenju prava na kulturni razvoj nacionalnih manjina, dokument br. 1394, 03. 09. 1954, Novi Sad (Council for Education and Culture of the Peoples Republic of Serbia – Autonomous Province of Vojvodina, Data on the realisation of the right to cultural development of national minorities, Document No. 1394, of 3rd September 1954), Archives of Yugoslavia, Collection No. 534, "Nacionalna komisija za UNESCO", Belgrade, Serbia.

[2] Serbia was one of the six constitutive republics of the Socialist Federal Republic of Yugoslavia. After the dissolution of the country, all the republics became independent states. For more on the emergence of new states at the territory of the former Yugoslavia and the link between the process of their recognition and minority rights, see: Duško Dimitrijević, "International Legal Order and the New States in the Balkans", in: Duško Dimitrijević (ed), *The Old and the New World Order—Between European Integration and the Historical Burdens: Prospect and challenges for Europe of 21st century*, Hanns Seidel-Stiftung, Institute of International Politics and Economics, 2014, pp. 429-433.

[3] See, for instance, Article 246 of the Constitution of the Socialist Federal Republic of Yugoslavia, adopted on 21 February 1974 (Ustav SFR Jugoslavije, Službeni glasnik SFRJ, br. 9/1974). A more detailed regulation of the use of minority languages commenced with the adoption of this constitution and the series of laws in the 1970s, such as: Law on the Method for Exercising the Right of Members of National Minorities to Use Their Own Language and Script Before the Authorities of the Republics, adopted by the Socialist Republic of Serbia in 1971 (Zakon o načinu ostvarivanja prava pripadnika narodnosti na upotrebu svog jezika i pisma kod republičkih organa, Službeni glasnik SRS, br. 14/71); Law on the Names of Companies and Organizations of Joint Labor in the Languages of Peoples and National Minorities of the Socialist Republic of Serbia from 1978 (Zakon o označavanju firme i naziva organizacija udruženog rada na jeziku naroda i narodnosti, Službeni glasnik SRS, br. 5/78); Law on the Method for Ensuring the Equality of Languages and Scripts of Peoples and National Minorities in Certain Bodies, Organizations and Communities of the Socialist Province of Vojvodina from 1977 (Zakon o načinu obezbeđivanja ravnopravnosti jezika i pisama naroda i narodnosti u određenim organima, organizacijama i zajednicama, Službeni list SAPV, br. 29/77); Law on Achieving Equality of Languages and Scripts in SAP Kosovo, adopted by the Socialist Province of Kosovo in 1977 (Zakon o ostvarivanju ravnopravnosti jezika i pisama u SAP Kosovu, Službeni list SAPK, br. 48/77).

to regulate the position of "new minorities"–ethnic groups that had represented constitutive nations within the common state.

The case study investigates implementation of the right to use a minority language before public bodies and looks into the major obstacles to its effective realisation in practice. It focuses on the use of minority languages in the delivery of administrative services and, hence, in the administrative proceedings carried out by different bodies making up the Serbian public sector.[4] The level of implementation of the legislation is investigated through the analysis of the official reports and other information produced by state bodies. In the study, we combine the doctrinal legal method with the socio-legal method. The former is used in the analysis of legal rules, while the latter enables identification of discrepancies between law in books and law in action i.e., of the realities of the official use of minority languages in Serbia. The data analysed in the research are those contained in the official reports and case law of the Protector of Citizens,[5] the Provincial Protector of Citizens—Ombudsperson (hereafter: Provincial Ombudsperson),[6] and the Commissioner for the Protection of Equality (hereafter: Equality Commissioner),[7] as state bodies with a mandate to protect the rights of citizens against violations committed by public authorities. The research also looks into the evidence collected by the Provincial Secretariat for Education, Regulations, Administration, and National Minorities—National Communities (hereafter: Provincial Secretariat),[8] which is the body in charge of supervising the implementation of rules on the use of minority languages at the provincial level. These bodies were selected as the most active in the field of minority rights protection. The given evidence was complemented by information found in reports by other relevant state bodies and international governmental organisations. The investigation covers the period from 2010 to the time of writing (summer 2024) in order to capture mid-term developments in the field.[9] The

[4] The scope of the notion of administrative matter was significantly expanded with the adoption of the Law on General Administrative Procedure (further: Administrative Procedure Act) in 2016, when the legislator introduced a very broad concept of the administrative matter (Art. 2) (Zakon o opštem upravnom postupku, Službeni glasnik RS, br. 18/2016, 95/2018 (Autentično tumačenje), 2/2023 (Odluka Ustavnog suda)).

[5] In Serbian: Zaštitnik građana Republike Srbije.

[6] In Serbian: Pokrajinski zaštitnik građana–Ombudsman.

[7] In Serbian: Poverenica za zaštitu ravnopravnosti Republike Srbije.

[8] In Serbian: Pokrajinski sekretarijat za obrazovanje, propise, upravu i nacionalne manjine-nacionalne zajednice.

[9] The cut-off year for the selection of data analysed in the case study was 2010, as the year when the first official report on the official use of minority languages was published. See: Goran Bašić,

analysis is limited to the minority languages that have the status of languages in official use at the municipal and provincial level.

The case study is structured in the following way. The first section provides a brief overview of the legal framework regulating the use of minority languages before public bodies. The second section singles out and analyses the most persistent obstacles to the implementation of the legal guarantees. This includes a detailed examination of specific cases and reports that highlight the practical difficulties faced by minority communities in exercising their linguistic rights. Finally, the conclusion offers a more theoretical view on the shortcomings of the existing arrangements for the use of minority languages before the Serbian public bodies.

2. THE LEGAL FRAMEWORK

Serbia has enacted a whole new set of rules on the official use of minority languages within the past 20 years. The enhancement of conditions for the preservation of minority languages and, consequently, of the linguistic identity of the Serbian national minorities has been the primary goal of the legislative activities in the field.[10] The fundamental tenet underlying these activities was that the official use of minority languages before public bodies would contribute to their preservation. Another important premise was that the use of minority languages should first and foremost be secured for those languages that stand the best chance of benefiting from such legal arrangements because their speakers make up a sizable portion of the population at the municipal or provincial level.

The use of minority languages before public bodies is essential for their preservation and, hence, for the preservation and nurturing of the minority identity.[11] The right draws its legal basis from the

Ljubica Đorđević, Exercise of the Right to Official Use of Languages and Scripts of National Minorities in the Republic of Serbia, Protector of Citizens of the Republic of Serbia, 2010.

[10] Another goal is the equality of the members of minority communities with the members of the majority group. See Art. 2, para. 2, of the Constitution of the Republic of Serbia from 2006 (Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006, 16/2022 (Odluka o proglašenju Ustavnog zakona za sprovođenje Akta o promeni Ustava Republike Srbije - Amandmani I - XXIX – Službeni glasnik RS, br. 115/2021)).

[11] The legal framework is also made of the number of bilateral agreements concluded between Serbia and the neighbouring countries. They also concern the official use of minority languages, but due to the limited space, they are not covered by the present analysis. See, for instance,

constitutional provisions. Article 79, paragraph 1, of the Constitution of Serbia grants members of national minorities the right to preserve their identity, *inter alia*, through the use of minority languages in proceedings before public bodies situated in the areas in which they live in greater numbers. Its further legal basis is found in the Law on Protection of Rights and Freedoms of National Minorities (hereafter: Minority Rights Act).[12] The law provides a definition of a national minority (Art. 2) and lays down the essentials of the official use of minority languages before public bodies (Art. 11). It also provides for the monitoring of the level of the implementation of these guarantees.

Detailed rules on the use of minority languages before public bodies are found in the Law on the Official Use of Language and Script (hereafter: Official Languages Act).[13] After the amendments that took place in 2010, this law became a key piece of legislation pertaining to minority languages' official use.[14] The entire third section of the law, entitled "The Official Use of Language and Script of National Minorities", is dedicated to the matter. Here, the legislator sets the substantive and procedural conditions that should be met for a minority language to become a language in official use in a municipality (Art. 11, para. 2); addresses the question of minority languages in official use in the Autonomous Province of Vojvodina (Art. 11, para. 7); and points to the core domains of public life that make up the concept of the official use of minority languages. One of these domains is "the use of languages of national minorities in [...] conducting the administrative proceedings, the use of minority languages by the public administration bodies in communication with the citizens, the issuing of public documents, and keeping of public registries and of the personal data records in the languages of national minorities, as well as the equal validity of the public documents issued in the languages of national minorities" (Art.

Art. 6, para. 2, of the Agreement between Serbia and Montenegro and the Republic of Croatia on the Protection of the Rights of the Serbian and Montenegrin Minority in the Republic of Croatia and of the Croatian Minority in Serbia and Montenegro, signed on 15 November 2004 (Zakon o ratifikaciji Sporazuma između Srbije i Crne Gore i Republike Hrvatske o zaštiti prava srpske i crnogorske manjine u Republici Hrvatskoj i hrvatske manjine u Srbiji i Crnoj Gori, Službeni list SCG - Međunarodni ugovori, br. 3/2005). More on this in: Nada M. Raduški, "Nacionalne manjine u bilateralnim sporazumima Srbije sa zemljama u regionu", *Međunarodna politika*, 1174, 2019.

[12] Zakon o zaštiti prava i sloboda nacionalnih manjina, Službeni list SRJ, br. 11/2002, 57/2002, Službeni glasnik RS, br. 72/2009, 97/2013 (Odluka Ustavnog suda), 47/2018.

[13] Zakon o službenoj upotrebi jezika i pisma, Službeni glasnik RS, br. 45/91, 53/93, 67/93, 48/94, 101/2005, 30/2010, 47/2018, 48/2018 (ispravka).

[14] In 2010, the text of Art. 11 of the Minority Rights Act was in its entirety, albeit with some minor non-substantive changes, copied to the Official Languages Act.

11, para. 3). Five articles in this section are devoted to regulating the use of minority languages in various types of judicial and non-judicial proceedings, including activities that fall within the ambit of administrative proceedings. The law regulates the question of who is entitled to use minority languages in the proceedings, before which bodies a party might lodge such a request, and what the scope of this right is (Art. 12). Article 13 sets the rules on how to determine the language of proceedings and establishes the duty of a public officer conducting the proceedings to inform the party about the languages that are in official use at the given body, and to ask the party to opt for one of these languages. All of this is to be recorded in the minutes of the proceedings (para. 4). The use of minority languages in administrative proceedings is addressed in the Administrative Procedure Act, in the section on general rules that are to be observed by public entities at all levels of the country's territorial organisation. Its Article 4 stipulates that the administrative procedure shall be undertaken in the Serbian language and the Cyrillic alphabet (para. 1) and in the language and script of a national minority in official use (para. 2).

Monitoring the equal official use of languages is to be carried out by the ministries responsible for running state affairs in the fields of public administration, transport, urban planning, housing, communal affairs, education, culture, and health, each within their respective scope of work.[15] In the Autonomous Province of Vojvodina, the monitoring of the use of minority languages before public bodies is entrusted to an inspector within the Provincial Secretariat, while there are no specific arrangements for supervising the equal official use of languages in other parts of Serbia.[16] The Minority Rights Act in this domain also assigns a monitoring role to the national minority councils, which can initiate the process of administrative supervision.[17] The analysis shows that the applicable laws do not regulate the matter in the manner which could secure a functional monitoring system.[18]

[15] Art. 22 of the Official Languages Act.

[16] See: Provincial Secretariat, Annual Inspection Plan for 2024 (Pokrajinski sekretarijat, Godišnji plan inspekcijskog nadzora za 2024).

[17] Article 18, para. 2, of the Minority Rights Act. See also Art. 22, para. 6, of the Law on National Councils of National Minorities (Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik RS, br. 72/2009, 20/2014 (Odluka Ustavnog suda), 55/2014, 47/2018). According to V. Đurić this is a very unique feature of the Serbian legal framework, given that no other national legislation assigns such a role to the autonomous minority bodies. See: Vladimir Đurić, *Neteritorijalna manjinska autonomija/samouprava u uporednom pravu,* Institut za uporedno pravo, 2018, p. 260.

[18] The given problem was singled out in a paper of Dimitrijević and Vučetić already in 2015. See: Predrag Dimitrijević, Dejan Vučetić, "Ostvarivanje prava na službenu upotrebu jezika i pisma

A careful reading of the relevant rules, in particular of the Official Languages Act, shows that the law differentiates three categories of minority language rights when it comes to the proceedings before public bodies:

> a) the rights of persons who cannot be considered members of a national minority as per the definition of national minority laid down in the Minority Rights Act;
>
> b) the rights of persons whose minority languages are in official use in the relevant public body;
>
> c) the rights of persons who are members of national minorities but whose language is not in official use in the relevant public body.

The first category belongs to the basic rights that are guaranteed in all types of proceedings in which individual rights and interests are determined in accordance with the legal principle *audi alteram partem,* or the right to be heard.[19] Only the second and third category are those that truly concern the use of minority languages before public bodies.

Despite the legislator's intention to regulate the matter in one legal act and in sufficient detail, the relevant provisions fall short of providing a comprehensive and systematic approach to the use of minority languages before public bodies. Moreover, the very basic analysis of its provisions points to several shortcomings in the legal framework. The first one concerns the relationship between the general rules (first section) and the official use of minority languages (third section), which is rather confusing due to the number of overlapping provisions and the incongruity between their texts.[20] Secondly, the three types of rights outlined in our classification, particularly the rights of members of national minorities whose languages are in official use (b) and of those whose languages are not in official use in the relevant public body (c), are not clearly delineated. The third deficiency in the Official Languages Act ensues from the often-confusing phrasing of its

prilikom upravnog postupanja u Republici Srbiji", *Zbornik Pravnog fakulteta u Nišu*, 70, 2015, p. 245.

[19] Art. 6 of the Official Languages Act and Art. 55, para. 1, in conjunction with Art. 11, para. 1, of the Administrative Procedure Act.

[20] For instance, Art. 11, para. 3, repeats to a great extent the more general provision on the key domains of the official use of languages contained in Article 3. Yet, the relationship between the two is rather confusing since Art. 3, para. 1(1), also refers to the communication between public bodies, without making a necessary distinction between Serbian and the minority languages in the official use (in effect, the legislator speaks about the official use of languages and scripts). The problem of overlapping provisions also concerns Art. 18, para. 2.

provisions. Finally, there is also an issue of incomplete legal regulation arising from the fact that, even though the legislator could not regulate all the practical aspects of the use of minority languages before public bodies in a single law, the given matter cannot be subject to bylaws. According to the 2012 ruling of the Constitutional Court of Serbia, the official use of languages cannot be governed by secondary legislation.[21]

A brief overview of the key provisions regulating the right of members of national minorities to use their own language before public bodies shows that there is a legal obligation of public authorities to safeguard this right and that the legal framework for its realisation is in place. The analysis also shows that this segment of the Serbian legal system exhibits a number of deficiencies. Whether the identified deficiencies have some bearing on the implementation of the analysed provisions and, hence, on the level and efficiency of the realisation of the given right in practice is investigated in the following section.

3. OBSTACLES TO THE REALISATION OF LEGAL GUARANTEES

According to the population census conducted in 2022, there are twenty-one ethnic communities in Serbia.[22] About 12 percent of its citizens have as a mother tongue a language other than Serbian. They are

[21] Decision of the Constitutional Court of the Republic of Serbia No. IUz-353/2009, of 10th July 2012 (Odluka Ustavnog suda Republike Srbije br. IUz-353/2009 od 10. 07. 2012), p. 86. For this reason, the provincial legal regulation on official languages is scarce. After the 2012 Constitutional Court's ruling, the Provincial Assembly repealed, among others, its Decision on the Closer Regulation of Certain Issues of the Official Use of Languages and Scripts of National Minorities in the Territory of the Autonomous Province of Vojvodina (Pokrajinska skupštinska odluka o bližem uređivanju pojedinih pitanja službene upotrebe jezika i pisama nacionalnih manjina na teritoriji Autonomne Pokrajine Vojvodine, Službeni list APV, br. 8/2003, 9/2003). For a critical stance towards this development, see: Katinka Beretka, "De iure potvrđenost multikulturalnog karaktera AP Vojvodine", *Pravni zapisi*, 9(1), 2018. The administrative procedure also cannot be regulated in bylaws. This ensues from the interpretation of Art. 3, para. 2, of the Administrative Procedure Act by the body for the coordination of the process of harmonisation of special laws with the Administrative Procedure Act established by the Ministry of State Administration and Local Self-Governance of the Republic of Serbia. See the relevant web page of the Ministry (Ministarstvo za državnu upravu i lokalnu samoupravu).

[22] Statistical Office of the Republic of Serbia, Results of the 2022 Census of Population, Households and Dwellings: On the population of the Republic of Serbia according to ethnocultural characteristics, 2023 (Republički zavod za statistiku Republike Srbije, Rezultati popisa stanovništva, domaćinstava i stanova 2022. godine: o stanovništvu Republike Srbije prema etnokulturalnim karakteristikama, 2023), p. 22.

native speakers of 17 minority languages spoken in the country.[23] The northern province of Serbia, the Autonomous Province of Vojvodina, is the most linguistically diverse region, with five minority languages being in official use before the provincial public bodies.[24] At the level of local self-governance, the picture gets even more complex given that, in 41 of the province's 45 municipalities, one or more minority languages are in official use.[25]

Comprehensive data on the presence of minority languages before public bodies is not available because public bodies do not register administrative services per language in which they are delivered.[26] Consequently, there are no statistics on the overall number of administrative services provided in minority languages.

Certain data is available for the Province of Vojvodina. According to the Provincial Secretariat's last report, 509 administrative proceedings were conducted in 2022 in minority languages before provincial bodies. The data shows that these proceedings were carried out in only two municipalities, both of which have a Hungarian-speaking majority.[27] According to the report, no administrative proceedings in minority languages were conducted before provincial bodies.[28] The 2023 report of Serbia on the implementation of the Charter for Regional or Minority Languages documents an even lower number of administrative proceedings conducted in the Hungarian language.[29]

The available evidence regarding other regions shows that the minority languages were used in administrative proceedings in only a few municipalities. One such municipality is Bujanovac, where 923 proceedings were conducted in the Albanian language in 2021, with a similar trend being recorded in the first half of 2022, when 286 proceedings were conducted in that language.[30] Regarding the language

[23] *Ibid*, p. 13.
[24] Art. 24, para. 1, of the Statute of the Autonomous Province of Vojvodina (Statut Autonomne pokrajine Vojvodine, Službeni list APV, br. 20/2014).
[25] Detailed data on the minority languages in official use and the related features of the public administration bodies for each local self-government unit in Vojvodina are available on the website of the Provincial Secretariat.
[26] See Art. 211 of the Administrative Procedure Act.
[27] Provincial Secretariat, Information on the Official Use of Language and Script, 2023 (Pokrajinski sekretarijat, Informacija o službenoj upotrebi jezika i pisma, 2023), p. 14.
[28] *Ibid.*
[29] Republic of Serbia, Sixth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter for Regional or Minority Languages, 5 January 2023, MIN-LANG (2023) PR 1, p. 134.
[30] *Ibid*, p. 78.

of the Bulgarian national minority, only two submissions written in Bulgarian were received in the municipality of Dimitrovgrad in that period. In the municipality of Bačka Palanka, 91 requests for administrative proceedings in Slovak were recorded in 2019, but there is no data on the final number of administrative matters that were actually completed in the minority language.[31] There are indications that, if the data had been collected in a systematic manner, they might have shown that the real number of administrative matters resolved through the use of minority languages was somewhat higher.[32] Nonetheless, a basic reading of the available reports undoubtedly leads to the conclusion that, over the last ten years or so, the overall number of administrative proceedings conducted in minority languages has remained low.

The underutilisation of minority languages in the work of public bodies has been the most problematic aspect of the position of minority languages in Serbia. Over the last twenty years, no discernible rise in the use of minority languages before public bodies has been detected,[33] despite improvements in some other dimensions of their official use.[34] The most direct cause of such a state of affairs, according to the

[31] *Ibid*, p. 196.

[32] That the given data might provide only a partial picture ensues from the figures available for the municipality of Subotica that, reportedly, has a very developed practice of providing administrative services in Hungarian. For instance, in the Special Report on the Official Use of Hungarian Language and Script from 2018, the Protector of Citizens pointed to Subotica as a municipality that in the given year issued the greatest number of administrative acts in this language (Zaštitnik građana, Poseban izveštaj o službenoj upotrebi mađarskog jezika i pisma, 2018, p. 12). On the other hand, in its 2023 evaluation report, the Committee of Experts of the European Charter for Regional or Minority Languages notes that, according to the official information received, minority languages were not used in proceedings during the period under review and that, "with the partial exception of Hungarian, minority languages have not been used in oral or written submissions to local branches of the national authorities". See: Committee of Experts of the European Charter for Regional or Minority Languages, Fifth Evaluation Report on Serbia, adopted on 17 March 2023, MIN-LANG(2023)3, para. 34, p. 12, and para. 39, p. 12.

[33] There is a long list of reports of the national and international bodies pointing to this. Among the most recent, see: Committee of Experts of the European Charter for Regional or Minority Languages, Fifth Evaluation Report on Serbia, adopted on 17 March 2023, para. 78, pp. 12-13; Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Serbia, adopted on 26 June 2019, ACFC/OP/IV(2019)001, p. 26; Committee of Ministers, Recommendation CM/RecChL(2023)4 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Serbia, adopted on 4 October 2023. The same was observed by scholars. See, for instance: Predrag Dimitrijević, Dejan Vučetić, "Ostvarivanje prava na službenu upotrebu jezika i pisma prilikom upravnog postupanja u Republici Srbiji", *Zbornik Pravnog fakulteta u Nišu*, 70, 2015, pp. 247-248; Nataša Kiš, "O nekim aspektima jezičke politike u Vojvodini kroz stavove prema jeziku", *Zbornik Matice srpske za filozofiju i lingvistiku*, 62(2), 2019, p. 183.

[34] Such as the use of minority languages and scripts in the names of bodies exercising public authority and in toponyms (Art. 11, para. 5), and the right to have personal names entered in

Provincial Secretariat, is the low volume of requests for delivery of administrative services in minority languages.[35] Other reasons are in the official reports typically summarised in the finding that minorities in Serbia do not take advantage of the legal possibility to have the administrative matters decided by the administrative bodies in their mother tongue, fearing that that could lead to the longer and more complex administrative proceedings and to the correspondingly higher costs.[36]

A further analysis of the reports shows that there are three main groups of obstacles to the equal use of minority languages. The first group concerns the lack of awareness among the members of national minorities about the right to use their own language before public bodies, as well as the lack of knowledge on the part of civil servants regarding the content and scope of this right. The second group of challenges pertains to the lack of basic prerequisites for the timely and effective delivery of administrative services in minority languages, which, eventually, is a consequence of the non-realisation of some other aspects of the right to the equal use of official languages. The third group involves the insufficient number of civil servants with an adequate command of minority languages. In the following sections we illustrate the three groups of obstacles by identifying and analysing the typical problems that members of minorities face when attempting to use their own language before public bodies.

3.1 Insufficient knowledge of legal guarantees

In some of the reports, the low realisation of linguistic guarantees in the context of administrative services is attributed to the general lack of awareness among minority communities' members regarding their rights.[37] An exception to this is the report on the official use of

public documents and official records in accordance with the language and orthography of the members of national minorities concerned (Art. 9, para. 1, of the Minority Rights Act). See, for instance: Provincial Secretariat, Information on the Official Use of Language and Script, 2020 (Pokrajinski sekretarijat, Informacija o službenoj upotrebi jezika i pisma, 2020), p. 12.

[35] Provincial Secretariat, Information on the Official Use of Language and Script, 2023 (Pokrajinski sekretarijat, Informacija o službenoj upotrebi jezika i pisma, 2023), p. 14.

[36] See, for instance: Republic of Serbia, Fifth Report submitted to the Advisory Committee on the Framework Convention for the Protection of National Minorities, 1 September 2022, ACFC/SR/V(2022)003, p. 73; Strategy for the prevention and protection against discrimination from 2022 to 2030 of the Republic of Serbia (Strategija prevencije i zaštite od diskriminacije Republike Srbije za period od 2022. do 2030. godine, Službeni glasnik RS, br. 30/2018), pp. 44-45.

[37] See: Republic of Serbia, Fifth Report submitted to the Advisory Committee on Framework Convention, 2022, p. 73; Advisory Committee on Framework Convention, Fourth Opinion on

the Hungarian language and script, published in 2018, in which the Protector of Citizens notes that members of this particular minority have a generally good level of understanding of their rights, including those related to the official use of the Hungarian language. This is attributed to the proactive approach of the Hungarian National Council.[38] In the same report, the Protector of Citizens, nonetheless, observes that requests to conduct administrative proceedings in the Hungarian language are rare because they tend to slow down the administrative proceedings. The same body also points to the lack of accessible information on the right to use minority languages in proceedings before the public bodies and of the instructions on how to lodge such requests.[39] For instance, in the Special Report on the Official Use of the Bulgarian Language and Script, the Protector notes that, while there seems to be general awareness among members of the national minority and civil servants that the law provides the possibility of having administrative matters decided in the Bulgarian language, none of the bodies covered by the assessment had information about the right to use the minority language publicly displayed in the office.[40]

Another aspect of this problem is the lack of understanding on the part of public bodies of what their duties are when it comes to the official use of minority languages. An illustration of this can be found in complaints lodged by members of minority communities for violations of their language rights. A review of these complaints shows that there are three basic types of violations of the legal guarantees for the official use of minority languages: a) minority language in official use is treated as a foreign language, b) minority language in official use is not treated equally with the Serbian language, c) public body refuses to conduct proceedings in the minority language in official use. For instance, in a case initiated before the Provincial Ombudsperson in 2014, the text of a document used in the administrative proceedings was not accurately translated into Hungarian, which had negative

Serbia, 2019, p. 26, para. 78; Provincial Secretariat, Information on the Official Use of Language and Script, 2023 (Pokrajinski sekretarijat, Informacija o službenoj upotrebi jezika i pisma, 2023), p. 23.

[38] Indeed, the National Council of the Hungarian Minority has a special unit dedicated to the official use of the Hungarian language. See the website of the National Council of the Hungarian National Minority.

[39] See: Protector of Citizens, Regular Annual Report for 2016 (Zaštitnik građana Republike Srbije, Redovan godišnji izveštaj za 2016), p. 16.

[40] Protector of Citizens, Special Report on the Official Use of the Bulgarian Language and Script, 2021 (Zaštitnik građana, Poseban izveštaj o službenoj upotrebi bugarskog jezika i pisma, 2021), p. 29.

consequences for the applicant's interests. Despite the fact that both languages were in equal official use in the given municipality, in the official response to the Ombudsperson's inquiry, the local public administration body argued that if the two language versions of the same text were incompatible, the Serbian version should prevail.[41] The Protector of Citizens reports in 2018 on a case initiated by the National Council of the Albanian National Minority regarding the refusal of the local branch of tax administration to act upon the request for the resolution of an administrative matter, which was written in the Albanian language in a municipality in which this language is in official use. In its response to the allegations, the public authority stated that its civil servants were not informed that they were obliged to act upon a request written in a minority language.[42] Three years later, in a report from 2021, the Protector of Citizens described a practice of a municipal public body requiring members of the Bulgarian national minority to accompany all the documents submitted in the Bulgarian language with a certified translation, even though Bulgarian is in official use in the given municipality.[43] In her paper on the level of the realisation of linguistic minority rights in Vojvodina, Katinka Beretka also observes that civil servants often do not understand the difference between foreign languages and minority languages in official use, and as a result, treat minority languages as foreign ones. Beretka is of the opinion that this is a consequence of a deficient legal framework.[44]

[41] Provincial Ombudsman, Opinion No. I-HM-1-02/14 of 17 March 2014 (Mišljenje Pokrajinskog ombudsmana br. I-HM-1-02/14 od 17.03.2014).

[42] Protector of Citizens of the Republic of Serbia, Special Report on the Official Use of the Albanian Language and Script, 2018 (Zaštitnik građana Republike Srbije, Poseban izveštaj o službenoj upotrebi albanskog jezika i pisma, 2018), p. 33. In a similar case, decided by the Provincial Ombudsperson in 2012, it was found that the local branch of the central tax authority breached the legal guarantees for the equal use of languages in official use by repeatedly refusing to conduct administrative procedures in the relevant minority language. On that occasion, the responsible central-level institution refused to recognise the violation by denying that it was under any obligation to provide the relevant administrative forms in the minority languages at its local branch offices. See: Protector of Citizens, "Is avoiding to give a response a mechanism for protection of minority rights?", 2012 (Zaštitnik građana, "Izbegavanje odgovora mehanizam zaštite manjinskih prava?", 2012).

[43] Protector of Citizens, Special Report on the Official Use of the Bulgarian Language and Script, 2021, p. 28. The Protector otherwise notes a significant improvement in other municipalities of the same region with regard to the special administrative procedures analysed in the report. This type of violation was identified as early as 2010 in a case initiated before the Provincial Ombudsperson against the Municipality of Zrenjanin. Provincial Ombudsman, Opinion No. I-NM-1-51/10 of 21 December 2010 (Mišljenje Pokrajinskog ombudsmana br. I-NM-1-51/10 od 21. 12. 2010).

[44] In this context, Beretka also referred to the practice where the public authorities request parties to administrative proceedings to submit the official translation into Serbian of docu-

3.2 The absence of basic prerequisites

Another group of obstacles, closely related to the one previously analysed, concerns the absence of basic conditions for providing administrative services in minority languages. The most apparent flaw is the availability of translations in minority languages of laws laying down the ground rules for conducting public proceedings. Even though the Minority Rights Act establishes the duty of the relevant ministry to ensure translation of all the laws of relevance for the realisation of minority rights (Art. 11a),[45] so far, the given provision has been interpreted in a very narrow way as if it pertains solely to legislation establishing minority rights and anti-discrimination standards. In Vojvodina, legal acts enacted by provincial bodies are translated into all five languages in official use;[46] however, this does not make up for the lack of translations of relevant state-level legislation. Similarly, at the local level, it is observed that only municipal statutes have been translated into the languages in official use.

The central authorities recognised this problem in the fifth report on the implementation of the Framework Convention, where they acknowledged that the lack of translations of laws governing procedures before public bodies made it "difficult to implement such procedures by employees in the administration and judiciary".[47] As early as 2010, the two researchers noted that it is very hard to enforce the provisions on the use of minority languages without translations of major procedural laws, and that such a practice could lead to the use of non-standardised legal terminology.[48] In other words, even if the administrative procedure were conducted in a minority language, the ensuing decisions of public bodies could negatively affect the level of legal certainty.

ments that are in minority languages in official use: Katinka Beretka, "Language Rights and Multilingualism in Vojvodina", *International Journal on Minority and Group Rights*, 23(4), 2016, p. 514.

[45] The given rules were introduced in 2018 through the amendments to the Minority Rights Act (Law on Amendments of the Law on Protection of Rights and Freedoms of National Minorities (Zakon o izmenama i dopunama Zakona o zaštiti prava i sloboda nacionalnih manjina, Službeni glasnik RS, br. 47/2018)), and they are also part of the rules laid down in Art. 11, para. 6, the Official Languages Act.

[46] See: Provincial Assembly Decision on Publishing Regulations and Other Acts of the Autonomous Province of Vojvodina (Pokrajinska skupštinska odluka o objavljivanju propisa i drugih akata, Službeni list APV, br. 54/2014, 29/2017, 12/2018).

[47] Republic of Serbia, Fifth Report submitted to the Advisory Committee, 2022, pp. 73-74.

[48] Goran Bašić, Ljubica Đorđević, Exercise of the Right to Official Use of Languages and Scripts of National Minorities in the Republic of Serbia, 2010, p. 59.

The availability of administrative forms in minority languages is an essential requirement for the use of these languages before public bodies. An official report indicates that the degree of realisation of legal guarantees for the equal official use of languages is greater in municipalities where administrative forms are also issued in minority languages.[49] Yet, according to data gathered by the Provincial Secretariat, this has not been the case in the majority of municipalities in Vojvodina.[50]

One aspect of the issue is the absence of administrative forms in minority languages; another is that individuals from minority communities are unable to access the already available forms. A key component of Serbia's public administration reform, ongoing for the past twenty years, has been the introduction and implementation of a comprehensive e-government program. The 2016 Action Plan for the Exercise of the Rights of National Minorities envisions the provision of electronic information, services, and documents through an e-government portal in the languages of national minorities as a crucial activity for realising the right to use minority languages and scripts.[51]

To date, these activities have been only partially completed.[52] Administrative forms in minority languages are available only to a limited extent, primarily on the websites of certain municipalities.[53] The central e-governance web portal with state-wide coverage does not offer access to administrative services in minority languages. Despite the obligation of every municipality to create and maintain an official website in all officially used languages and scripts,[54] most municipalities

[49] Protector of Citizens, Special Report on the Official Use of the Hungarian Language and Script, 2018, p. 42.

[50] Web site of the Provincial Secretariat—section dedicated to the languages in official use.

[51] Action Plan for the Exercise of the Rights of National Minorities of the Government of Republic of Serbia, March 3, 2016 (Akcioni plan za ostvarivanje prava nacionalnih manjina Vlade Republike Srbije, 2016), Activity no. 5.10.

[52] Although A. Vujić and V. Vukićević, in their Ex-post Analysis of the Implementation of the Action Plan for the Exercise of the Rights of National Minorities, mark the given activity as fully completed, this finding does not correspond to the reality. In effect, in their evaluation they refer only to the five minority languages that are in official use in the AP Vojvodina, while the text of the given activity, as laid down in the Action Plan, concerns all minority languages in official use at the municipal level. See: Aleksandar Vujić, Vladimir Vukićević, Ex-post Analysis of the Implementation of the Action Plan for the Exercise of the Rights of National Minorities, "Horizontal Facility for the Western Balkans and Turkey 2019-2022 - Promotion of Diversity and Equality in Serbia", Council of Europe, Ministry for Human and Minority Rights and Social Dialogue of the Republic of Serbia, June 2021, p. 30.

[53] For the illustration, see for instance, the official web pages of the city of Novi Sad, and the relevant sections of the websites of the municipalities of Vrbas and Srbobran.

[54] Art. 28, para. 1 of the Law on Electronic Administration (Zakon o elektronskoj upravi, Službeni glasnik RS, br. 27/2018); Art. 6 of the Regulation on Detailed Conditions for the Creation and

in Vojvodina operate monolingual websites, while those that do provide translations frequently fail to adhere to established standards in the field.[55] The websites contain incomplete translations[56] or low-quality translations characterised by numerous terminological, syntactic, or other errors rendering the translations nearly unusable.[57] The situation is significantly worse at the provincial level. According to the Provincial Secretariat, only one of the 26 public administration bodies has a website fully translated into all five languages in official use in the province.[58]

The circumstances surrounding the question of bilingual or multilingual notice boards in public institutions are largely analogous to those observed in the digital realm. Although there has been significant progress when it comes to the official signs placed at public institutions' buildings, information indicating that administrative services are provided in minority languages is rarely displayed in public offices.[59] The extent to which public servants fulfil their statutory duty to determine the language of administrative proceedings by soliciting the party's preference for one of the officially used languages remains a complex issue,[60] particularly when considering the low statistics on the number of civil servants who are proficient in minority languages.[61]

Maintenance of the Web-Presentations of Public Bodies (Uredba o bližim uslovima za izradu i održavanje veb prezentacija organa, Službeni glasnik RS, br. 104/2018).

[55] According to the SIGMA–OECD Methodological Framework of the Principles of Public Administration, "[t]he standard is met if the information is up to date, available free of charge in all official languages of the country, displayed in a user-friendly manner (at a minimum accessible in no more than three clicks from the main web page of the institution) and published in open format [...]." SIGMA – OECD, Methodological Framework of the Principles of Public Administration, 2019, p. 129. More on the European administrative law standards in: Marko Davinić, Vuk Cucić, "Europeanization of General Administrative Procedure in Serbia", *Review of Central & East European Law*, 46(2), 2021.

[56] See, for instance, the official website of the Municipality of Pančevo.

[57] Provincial Ombudsperson, The presence of languages of national minorities in official use at the official websites of provincial authorities and local self-government units, 2018 (Pokrajinski ombudsman, Zastupljenost jezika nacionalnih manjina u službenoj upotrebi na zvaničnim internet-prezentacijama pokrajinskih organa i jedinica lokalne samouprave, 2018), p. 42.

[58] The remaining three bodies have websites that are either partially translated or translated only in one of these languages. Provincial Secretariat, Information on the Official Use of Language and Script, 2023, pp. 22, 23.

[59] See, for instance: Protector of Citizens, Special Report on the Official Use of the Bulgarian Language and Script, 2021, p. 29.

[60] Determination of the language in which the administrative proceedings will be conducted is a preliminary issue, according to Art. 13, para. 1 of the Official Languages Act.

[61] For an example of a breach of this duty, see the case decided by the Commissioner for Protection of Equality: Commissioner for Protection of Equality, Opinion No. 07-00-298/2019-02 of 29 November 2019 (Poverenica za zaštitu ravnopravnosti, Mišljenje br. 07-00-298/2019-02 od 29. 11. 2019).

3.3 Inadequate number of civil servants with proficiency in minority languages

The insufficient representation of persons of minority origin in the public sector in Serbia has been documented in both national and international reports on the matter. Since the first monitoring cycle, this deficiency has been singled out by the Advisory Committee as the major impediment to the full realisation of minority rights. Given the link between the Advisory Committee's opinions and the process of monitoring the progress of candidates for EU membership, this issue has also occupied an important place in the efforts of Serbia to obtain favourable reports from the European Commission.[62] Several laws governing employment in public sector bodies have been revised or enacted since 2018 with the aim of enhancing the participation of minority communities. This strategy has been accompanied by a number of other measures.[63]

However, the Serbian public sector does not reflect the ethnic diversity of its population, which negatively impacts its ability to provide administrative services in minority languages.[64] As observed,

[62] On the importance of the CoE minority protection mechanisms in the process of stabilisation and association with the European Union, see: Vladimir Đurić, "Proširenje EU i zaštita nacionalnih manjina: Novi izazovi i stare perspektive za zemlje Zapadnog Balkana", in: Dragan Đukanović, Vladimir Trapara (eds.), *Evropska unija i Zapadni Balkan – Izazovi i perspektive*, Institut za međunarodnu politiku i privredu, 2014; Snježana Vasiljević, "The Legal Aspects of the Protection of Minorities in the Process of Stabilization and Association", in: Katarina Ott (ed.), *Croatian Accession to the European Union*, Vol. 2, 2004.

[63] See the activities envisioned under Chapter VIII of the Action Plan for the Implementation of the Rights of National Minorities (Vlada Republike Srbije, Akcioni plan za ostvarivanje prava nacionalnih manjina, 2016).

[64] See: Commissioner for Protection of Equality, Annual report for 2023 (Poverenica za zaštitu ravnopravnosti, Redovan godišnji izveštaj za 2023), p. 173; Protector of Citizens, Special Report on the Official Use of the Albanian Language and Script, 2018, p. 28; Ministry of Human and Minority Rights of the Republic of Serbia, Report on the visit to the national councils of national minorities in their seats, 2021 (Ministarstvo za ljudska i manjinska prava, Izveštaj o poseti nacionalnim savetima nacionalnih manjina u njihovim sedištima, 2021), p. 15; Committee of Ministers of the CoE, Resolution CM/ResCMN(2021)11 on the implementation of the Framework Convention by Serbia, 2021, p. 3; European Commission, Serbia 2023 Report, 8 November 2023, SWD(2023) 695 final, p. 50. For the more detailed figures on public bodies in Vojvodina, see data presented at the website of the Provincial Secretariat. Compare with the Report on the Implementation of the Revised Action Plan for Chapter 23 of the Republic of Serbia from 2023, where it is stated that "[a] number of local self-government units already have an adequate representation of members of national minorities in local self-government bodies, and in this regard there is no need to apply the prescribed affirmative measures" (Coordination body for the implementation of the Action plan for Chapter 23, Report on the Implementation of the Revised Action Plan for Chapter 23, "Justice and Fundamental Rights", III quarter 2023).

various legislative interventions have resulted in amendments to the legislation governing employment and the status of civil servants in public bodies, or the adoption of completely new rules. The Civil Servants Act, in its Art. 9, para. 3, establishes the obligation for central-level public administration bodies to pursue recruitment by paying attention to the question of whether the ethnic composition of their workforce, to the greatest extent possible, mirrors that of the population. An identical provision is contained in Art. 19, para. 3, of the corresponding provincial law.[65] The comparison between the ethnic composition of the public bodies' workforce and that of the population at large is to be conducted by comparing the number of persons who declare themselves as members of a minority community in the register of employees in the relevant body with the number of inhabitants of minority origin in the local self-government unit where the state body has its seat or branch office. If the given comparison shows that there is underrepresentation of members of minority communities inhabiting traditionally or in greater numbers the relevant local self-government unit, then the state body shall conduct the process of recruitment by using affirmative measures. These measures give preference to candidates of minority origin in the final selection for employment when candidates are equally qualified. More specific rules on the criteria for evaluating whether the ethnic composition of a workforce reflects that of the population are provided in bylaws that also lay down other requirements for the use of affirmative action in public sector recruitment.[66]

Several factors cast doubt on the capacity of these legislative interventions, including the introduction of the recruitment-related affirmative action measures, to achieve the intended objectives. In addition to being overly complex and necessitating collection of sensitive personal information, their principal flaw is an undue emphasis on a candidate's ethnic affiliation. Compared to the formal declaration of membership in a minority group, proficiency in minority languages

[65] Law on Employees in the Autonomous Provinces and the Local Self-Governance Units (Zakon o zaposlenima u autonomnim pokrajinama i jedinicama lokalne samouprave, Službeni glasnik RS, br. 21/2016, 113/2017, 95/2018, 114/2021, 92/2023, 113/2017 - dr. zakon, 95/2018 - dr. zakon, 86/2019 - dr. zakon, 157/2020 - dr. zakon i 123/2021 - dr. zakon).

[66] Art. 11 of the Regulation on the Conduct of Internal and Public Competition for Filling Jobs in Autonomous Provinces and Local Self – Government Units (Uredba o sprovođenju internog i javnog konkursa za popunjavanje radnih mesta u autonomnim pokrajinama i jedinicama lokalne samouprave, Službeni glasnik RS, br. 107/2023). For a more detailed analysis, see: Milica V. Matijević, "Afirmativne mere za zapošljavanje pripadnika nacionalnih manjina u državnoj upravi Republike Srbije – osvrt na postojeća rešenja", *Pravni život,* 11(3), 2019.

would serve as a better criterion.[67] This criterion could function as a proxy for minority identity and warrant that an increased representation of minority groups among the civil servants would eventually result in a greater presence of minority languages in the work of public bodies.[68] The possibility of introducing a certain number of posts for which proficiency in minority languages would be required is envisioned in the relevant bylaws.[69] However, existing data indicate that this possibility is rarely used in practice.[70]

The potential of these rules to bring about tangible improvements is further undermined in those cases in which proficiency in minority languages and proficiency in foreign languages are wrongly established as alternative recruitment criteria.[71] Another aspect that asks for a more serious consideration of the recruitment process is whether the employees' level of proficiency in a minority language is advanced enough to enable them to deal with the complex administrative matters. The Provincial Secretariat's latest report indicates that courses on administrative law terminology are presently unavailable in higher education programs delivered in minority languages and in professional development programs for civil servants.[72] This is an additional factor

[67] The knowledge of minority languages under certain conditions can be used as a subsidiary criterion for the recruitment of persons belonging to national minorities. In some situations, it can play a very limited role in the process of the selection of candidates, and it is a criterion for recruitment for the positions where the knowledge of a minority language is required.

[68] See: Milica V. Matijević, "Afirmativne mere za zapošljavanje pripadnika nacionalnih manjina u državnoj upravi Republike Srbije – osvrt na postojeća rešenja", p. 14. This solution was also criticised by the Provincial Ombudsman, who is of the opinion that the criterion of minority origin should be combined with the criterion of knowledge of minority language(s) as a guarantee that only those members of minority groups who speak the language of the national minority to which they belong could benefit from the affirmative measures. Provincial Ombudsperson, The Knowledge of Languages and Scripts of National Minorities in Official Use before the Provincial Administrative Bodies, 2015 (Pokrajinski ombudsman, Poznavanje jezika i pisama nacionalnih manjina koji su u službenoj upotrebi u organima pokrajinske uprave, 2015, p. 9, 2018, p. 23). See also: Provincial Ombudsperson, Opinion No. I-HM-1-21/16 of 27 May 2016 (Pokrajinski ombudsman, Mišljenje br. I-HM-1-21/16 od 27. 05. 2016), p. 3. Compare with the opinion of Bašić and Lutovac who argue that the solution should be primarily sought in the more vigorous collection of the ethnicity-related data. Goran Bašić, Zoran Lutovac, "The Lack of Ethnically Sensitive Data in Serbia' Multiculturalism Policy"', *Stanovništvo*, 58(1), 2020.

[69] Art. 18, para. 2, of the Provincial Assembly Decision on the Provincial Administration (Pokrajinska skupštinska odluka o pokrajinskoj upravi, Službeni list APV, br. 37/2014, 54/2014 - dr. odluka, 37/2016, 29/2017, 24/2019, 66/2020 i 38/2021).

[70] See the relevant section of the website of the Provincial Secretariat.

[71] Provincial Ombudsperson, The Knowledge of Languages and Scripts of National Minorities in Official Use before the Provincial Administrative Bodies, 2015, p. 18.

[72] Provincial Secretariat, Information on the Official Use of Language and Script, 2023, p. 23. At the provincial level, the Provincial Secretariat organises the exams of the level of knowledge of administrative law terminology in the languages of national communities, in accord-

that may explain the very limited possibility of having administrative services delivered in minority languages.

4. CONCLUDING REMARKS

The three groups of obstacles we have just analysed, without doubt, are mutually interconnected, and they are an illustration, at the level of a single right, of what Guidetti and Rehbein call the "self-reinforcing loops of inequality".[73] The phrase can be used to point out how a low level of realisation of one dimension of a right negatively affects the realisation of another dimension of the same right, which then becomes yet another obstacle to the realisation of the first dimension and a source of further obstacles. In other words, the above-analysed obstacles to the use of minority languages before public bodies are systemic in nature.

Serbia has still not managed to create all the necessary institutional and other conditions for the effective equality of languages in official use, and that has had a bearing on the capacity of its public bodies to use these languages in the delivery of administrative services. The underrepresentation of the persons of minority origin in the public sector bodies has been an important part of that picture. The situation is, in the first place, a consequence of the non-systematic manner in which the given matter has been approached by the responsible institutions. There is no doubt that in the last two decades, Serbia has invested considerable political and legal efforts to lay down a broad spectrum of identity-preserving rights for its minority communities. This was not an easy task. As we have shown in the first part, participatory and related linguistic minority rights are a relatively new legal field with few standards and weak theoretical and practical foundations. In Serbia, these legislative and policy interventions were undertaken on the basis of the recommendations of the Advisory Committee and further elaborated in the context of stabilisation and association with the European Union. Due to the relative novelty of this field of law and

ance with the Provincial Assembly Decision on the Exam in a Foreign Language and in a Language of National Minority for Civil Servants (Pokrajinska skupštinska odluka o ispitu iz stranog jezika i jezika nacionalne manjine za rad u organima uprave, Službeni list APV, br. 14/03, 2/06, 18/09).

[73] Giovanni Guidetti, Boike Rehbein, "Theoretical Approaches to Inequality in Economics and Sociology. A Preliminary Assessment", *Transcience*, 5/1, 2014, p. 10.

practice, such recommendations often lacked theoretical examination and the real-life testing of their effectiveness. Motivated by the need to secure continued progress in the EU integrations, the Serbian authorities carried out the legislative and policy interventions with an urgency that has been a salient feature of the EU integration process in many other countries as well. As a result, the changes were introduced in an erratic and piecemeal manner. Given the breadth of the legal and policy changes aimed at accommodating the needs of different national minorities in a society with relatively modest resources, and the haste with which the process was undertaken, it is no surprise that the development of the institutional setup seriously lagged behind, turning many of the newly introduced rights into paper rights.[74]

The lack of a systematic approach to the use of minority languages in the provision of administrative services has been manifested in several interrelated shortcomings of the existing legal and institutional setup. There is a general lack of awareness among minority communities and public sector employees regarding the content and scope of the right to use minority languages before public bodies. The basic prerequisites for the enforcement of this right, such as the availability of administrative forms in minority languages, have not been secured by state institutions. The public sector workforce exhibits a tangible shortage of staff capable of providing administrative services of a more complex nature in minority languages. The legal rules for the use of minority languages before public bodies have not been elaborated in the secondary legislation. Last but not least, the absence of a comprehensive system for monitoring the implementation of the right to equal official use of minority languages has also become an important flaw of the existing framework. All of this confirms that the use of minority languages before public bodies has been affected by obstacles that are systemic in character.

To conclude, the identified challenges require a more systematic and integrated approach to the implementation and monitoring of the existing legal framework and its further development through secondary legislation and policy measures. Ultimately, securing the equal official use of minority languages in administrative proceedings will also

[74] On similar developments in other countries in Central, Eastern and South-Eastern Europe in: Francesco Palermo, Sergiu Constantin, "Litigating Linguistic Rights of National Minorities in Central, Eastern, and South-Eastern Europe", in: Bertus de Villiers, Joseph Marko, Francesco Palermo, Sergiu Constantin (eds.), *Litigating the Rights of Minorities and Indigenous People in Domestic and International Courts*, 2021.

necessitate further institutional and cultural shifts within the public sector. Only through such systemic efforts can Serbia fulfil its constitutional commitment to protecting the linguistic identity of its national minorities and preserve its linguistic wealth.

CONCLUSION

The right to effective participation in cultural, social, and economic life, as well as in public affairs, is enshrined in Article 15 of the Framework Convention and, for many, it represents a cornerstone of the European minority rights framework introduced in 1994. Article 15 outlines several distinct participatory rights, along with corresponding obligations for state parties. One of these obligations is to ensure an inclusive public sector that reflects the diversity of society, including its minority groups. To fulfil this commitment, state parties need to ensure conditions for adequate representation of persons belonging to national minorities in public bodies. When assessing compliance with this aspect of Article 15, the Advisory Committee applies what we refer to as "the standard of adequate representation of persons of minority origin in public sector bodies".

In the study, the term is used to identify and analyse the Advisory Committee's observations regarding the ability of state parties' public bodies to fulfil this minority rights obligation. These observations are often dispersed across the Committee's comments on various other provisions of the Convention. While their utility for clarifying the nature and scope of this aspect of Article 15 is constrained by the Advisory Committee's mandate, the standard of adequate representation, which they create, nonetheless offers a valuable tool for achieving a more consistent interpretation of Article 15. This study examined the thematic commentaries and country-specific opinions of the Advisory Committee with the goal of systematically exploring the normative foundations, rationale, content, scope, and limitations of the standard of adequate representation.

In interpreting Article 15's participatory rights, the Advisory Committee adopts an integrated approach that emphasises the interconnectedness of minority rights norms enshrined in the Convention. This approach is particularly evident in its pronouncements on the rationale behind the standard of adequate representation. The Committee frequently refers to adequate representation as a means to foster greater social cohesion, diversity, and good governance. When these social ideals are translated into their legal equivalents, it becomes clear

that adequate representation is a pathway to the realisation of two fundamental minority rights: the right to equal treatment and the right to identity, which are the ultimate rationale of all substantive minority rights established in the Convention.

A closer analysis of the relationship between the standard of adequate representation and Articles 4 and 5, which embody these rights, reveals three key objectives underlying the standard. First, the realisation of adequate representation contributes to the elimination of prejudice. Ensuring the adequate representation of persons of minority origin in public bodies helps eradicate biases and discriminatory practices targeting these groups. Second, it facilitates equal access to public services for national minorities. Their representation in the workforce and in the day-to-day operations of public bodies helps remove linguistic and other barriers, ensuring their equitable access to services. Third, the standard of adequate representation enables the accommodation of identity-related needs of national minorities. The connection between the language and other specific needs of these groups and their representation in public bodies underscores that such representation is essential for the preservation of minority identities.

To achieve these objectives, state parties are expected to create the conditions for adequate representation of persons belonging to national minorities in public bodies. The most appropriate method for achieving this aim depends on the specific circumstances of each country. First and foremost, the method should reflect the characteristics and needs of minority groups. A larger minority group that is settled in one part of the country would typically favour strategies facilitating its greater influence on public affairs of the country as a whole and ensuring that public bodies situated in the areas where its members live can meet all their identity-related needs. On the other hand, for minorities that are dispersed across the country or have smaller populations, the primary concern is typically to ensure adequate representation of their members in the public bodies dealing with matters that particularly affect them. These would include bodies responsible for delivering public services in the access to which they face specific barriers or those whose work has special importance for the preservation of their identity.

All public sector organisations are subject to the duties arising from the standard of adequate representation. In assessing the level of implementation of Article 15, the Advisory Committee generally refers

to the public sector as a whole, but it also points to its particular segments, such as the police, the judiciary, state-owned enterprises, and others. However, not all public sector bodies are to an equal extent required to mirror the multiethnic character of the society, and not all of them are expected to secure adequate representation of minority communities by the same means. When evaluating a state party's achievements regarding the standard of adequate representation, the Advisory Committee pays special attention to the degree of territorial and functional decentralisation of its public sector.

The study identified three basic rules that guide the Advisory Committee's assessments of the realisation of the standard of adequate representation concerning the territorial organisation of the public sector. First, in countries with a highly decentralised public sector—where local self-governing units are granted broad powers over the regulation and delivery of public services—the Advisory Committee's primary focus will be on the representativeness of local institutions. The second rule is that measures and strategies to ensure adequate representation should specifically target the public bodies operating in areas with a significant presence of persons belonging to national minorities or in regions where national minorities have historically resided. The third rule is that central-level public bodies should also reflect the ethnic and linguistic diversity of the population, albeit to a lesser extent, even in countries with highly decentralised public sectors.

When considering the scope of obligations ensuing from the standard in relation to the field of competences of a public body, it is clear that some segments of the public sector are subject to greater scrutiny than others. In other words, the Advisory Committee pays particular attention to the representation of national minorities in public bodies that provide certain types of public services. Here again, identifying these bodies requires a closer examination of the relationship between Article 15 and other provisions of the Convention, especially those that address areas of public life which are crucial to accommodating the special needs of minority groups. The analysis of the Advisory Committee's country-specific recommendations shows that these are the public bodies providing access to media, health, education, and administrative services in minority languages.

The investigation revealed two main approaches that state authorities can use to accomplish the standard of adequate representation of members of national minorities in public sector bodies. The first

approach focuses on the composition of the public sector workforce. Through this approach, the state seeks to fulfil the standard by securing adequate employment levels for persons belonging to national minorities in public sector bodies. The second approach is about ensuring that public services are provided in minority languages to the extent that is both necessary and feasible while also addressing other specific needs of national minorities. These two approaches are closely interlinked, as illustrated in the case study, given that increasing the employment rate of the members of national minorities is the most straightforward way to secure the provision of public services in minority languages and to meet other specific needs of national minorities. The analysis shows that the Advisory Committee's recommendations tend to prioritise the first approach. The Committee has consistently emphasised the importance of securing an adequate level of employment for members of minority populations as a means of accomplishing the Article 15 obligations. In addition to recruitment, these measures also address retention and promotion.

A range of measures can be employed to implement the two approaches. First and foremost, the state must ensure the basic legal, institutional, and administrative preconditions for a public sector that is representative of all segments of society. More specific measures come into play when greater efforts are required to achieve an inclusive public sector. In many state parties, due to past or present discrimination and the disadvantages minority communities face in access to public goods, effective equality may only be achieved through the adoption of special measures. The typology of special measures reflects the two approaches to the inclusiveness of public sector bodies. The first category consists of measures aimed at accommodating the language-related and other identity needs of national minorities. The second category focuses on improving employment opportunities for members of minority groups who are underrepresented in public sector bodies.

In the study, we point to the important difference between the two types of measures. While the first category of measures can generally be applied without significant limitations, the second can easily turn into unlawful practice in breach of the principle of equal treatment. The main limitations of the employment-related measures are identified in the analysis by invoking relevant judicial pronouncements on the lawful content and scope of affirmative measures. According to the principle of proportionality, as outlined in international case law

and interpretative documents, affirmative measures should not go beyond what is necessary to achieve the goal of full and effective equality, both in terms of their scope and duration. Furthermore, these measures should be designed and implemented in a way that guarantees their effectiveness.

Even though the text of Article 15 is vague, it imposes an obligation of result on the state parties, not merely an obligation of conduct. This means that the state parties to the Convention are free in their choice of measures for the implementation of Article 15, but those measures must be appropriate for fulfilling its objectives and must be implemented effectively. Consequently, state parties are also under the duty to regularly monitor their implementation and effectiveness through appropriate oversight mechanisms.

The case study on the use of minority languages before public bodies in Serbia, presented in the second part of the monograph, illustrated the causal relationship between the levels of realisation of Article 15 and some other provisions of the Convention in a real-life context. It also highlighted the systemic nature of state obligations as embodied in the standard of adequate representation. The case study underscored the need for further development of the standard to ensure that the participatory, linguistic, and other rights enshrined in the Framework Convention do not become paper rights. The way the minority rights criteria have so far been integrated into the EU integration process, including their effective participation component, reveals that more is needed to establish consistent minority rights practices across Europe.

LIST OF LEGAL MATERIALS, CASES, AND OTHER DOCUMENTS

Documents by the Advisory Committee on the Framework Convention for the Protection of National Minorities

Country-specific opinions

Thematic commentaries

Documents related to the Republic of Serbia

Legal materials

Case law

Reports

Units, 2018 (Pokrajinski zaštitnik građana – Ombudsman, Zastupljenost jezika nacionalnih manjina u službenoj upotrebi na zvaničnim internet-prezentacijama pokrajinskih organa i jedinica lokalne samouprave, 2018) 83

Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities, Annual Inspection Plan for 2024 (Pokrajinski sekretarijat, Godišnji plan inspekcijskog nadzora za 2024) 73

Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities, Information on the Official Use of Language and Script, 2020 (Pokrajinski sekretarijat za obrazovanje, propise, upravu i nacionalne manjine – nacionalne zajednice, Informacija o službenoj upotrebi jezika i pisma, 2020) 78

Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities, Information on the Official Use of Language and Script, 2023 (Pokrajinski sekretarijat za obrazovanje, propise, upravu i nacionalne manjine – nacionalne zajednice, Informacija o službenoj upotrebi jezika i pisma, 2023) 76, 78

Republic of Serbia, Fifth Report submitted to the Advisory Committee on the Framework Convention for the Protection of National Minorities, 1 September 2022, ACFC/SR/V(2022)003 78

Republic of Serbia, Sixth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter for Regional or Minority Languages, 5 January 2023, MIN-LANG (2023) PR 1 76

Statistical Office of the Republic of Serbia, Results of the 2022 Census of Population, Households and Dwellings: On the population of the Republic of Serbia according to ethnocultural characteristics, 2023 (Republički zavod za statistiku Republike Srbije, Rezultati popisa stanovništva, domaćinstava i stanova 2022. godine: o stanovništvu Republike Srbije prema etnokulturalnim karakteristikama, 2023) 75

Miscellaneous

BIBLIOGRAPHY

Books

Aleksandra Rabrenović, Milica V. Matijević, "Izazovi procesa zapošljavanja državnih službenika u zemljama zapadnog Balkana", in: Jelena Ćeranić, Vladimir Čolović (eds.), *Sećanje na dr Jovana Ćirića – putevi prava*, Institut za uporedno pravo, 2023, pp. 333-348. https://doi.org/10.56461/ZR_23.IMJC.16

Alessia Vacca, *Rights to Use Minority Languages in the Public Administration and Public Institutions: Italy, Spain and the UK*, Giappichelli, 2016.

Andreea Cârstocea, "Democracy, Participation and Empowerment", in: Tove H. Malloy (ed.), *Minority Issues in Europe: Rights, Concepts, Policy*, Frank & Timme, 2013, pp. 247-272.

Annelies Verstichel, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Intersentia, 2009.

Cliff Oswick, "The Social Construction of Diversity, Equality and Inclusion" in: Geraldine Healy, Gill Kirton, Mike Noon (eds.) *Equality, Inequalities and Diversity*, Palgrave Macmillan, 2011, pp. 18-36. https://doi.org/10.1007/978-1-137-28572-0_2

Constantine Economides, "Content of the Obligation: Obligations of Means and Obligations of Result", in: James Crawford**,** Alain Pellet**,** Simon Olleson (eds.), *The Law of International Responsibility*, Oxford University Press, 2010, pp. 371-382. https://doi.org/10.1093/law/9780199296972.003.0030

David J. Galbreath, Joanne McEvoy, *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness*, Palgrave Macmillan, 2012. https://doi.org/10.1057/9780230359222

Duško Dimitrijević, "International Legal Order and the New States in the Balkans", in: Duško Dimitrijević (ed), *The Old and the New*

World Order – between European integration and the historical burdens: Prospect and challenges for Europe of 21st century, Hanns Seidel-Stiftung, Institute of International Politics and Economics, 2014, pp. 427-441.

Fernand de Varennes, Elżbieta Kuzborska-Pacha, "Effective Participation of National Minorities in Public Life: The UN's Perspective", in: William Romans, Iryna Ulasiuk, Anton Petrenko Thomsen (eds.), *Effective Participation of National Minorities and Conflict Prevention*, Brill Nijhoff, 2020, pp. 17-42. https://doi.org/10.1163/9789004390331_003

Francesco Palermo, Sergiu Constantin, "Litigating Linguistic Rights of National Minorities in Central, Eastern, and South-Eastern Europe", in: Bertus de Villiers, Joseph Marko, Francesco Palermo, Sergiu Constantin (eds.), *Litigating the Rights of Minorities and Indigenous People in Domestic and International Courts*, 2021, pp. 179-218. https://doi.org/10.1163/9789004461666_008

Gabriel N. Toggenburg, "The Protection of Minority Rights by the European Union: The European Citizens' Initiative as a Test Case", in: Rainer Hofmann, Tove H. Malloy, Detlev Rein (eds.), *The Framework Convention for the Protection of National Minorities*: *The Commentary*, Brill, 2018, pp. 49-74. https://doi.org/10.1163/9789004339675_004

Gwendolyn Sasse, "Tracing the Construction and Effects of EU conditionality", in: Bernd Rechel (ed.), *Minority Rights in Central and Eastern Europe*, Routledge, 2009, pp. 17-31.

John Packer, "The OSCE High Commissioner on National Minorities: Pyrometer, Prophylactic, Pyrosvestis", in: Nazila Ghanea, Alexandra Xanthaki (eds.), *Minorities, Peoples and Self-Determination*, Martinus Nijhoff Publishers, 2005, pp. 249-268. https://doi.org/10.1163/9789047407119_017

Kirsten Shoraka, *Human Rights and Minority Rights in the European Union*, Routledge, 2010. https://doi.org/10.4324/9780203849248

Kristin Henrard, "Challenges to Participation in the Name of "Integration": Participation, Equality and Identity as Interrelated Foundational Principles of Minority Protection", in: William Romans, Iryna Ulasiuk, Anton Petrenko Thomsen (eds.), *Effective Participation of National Minorities and Conflict Prevention*, Brill Nijhoff, 2020, pp. 43-80. https://doi.org/10.1163/9789004390331_004

Marc Weller, "Article 15", in: Marc Weller (ed.), *The Rights of Minorities. A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, pp. 429-462. https://doi.org/10.1093/law/9780199207626.003.0018

María Amor, Martín Estébanez, "Council of Europe Policies Concerning the Protection of Linguistic Minorities and the Justiciability of Minority Rights", in: Nazila Ghanea, Alexandra Xanthaki (eds.), *Minorities, Peoples and Self-Determination*, Martinus Nijhoff Publishers, 2005, pp. 269-297. https://doi.org/10.1163/9789047407119_018

Milica V. Matijević, Ana Zdravković, "Use of Minority Languages in Administrative Proceedings in Serbia", in: Srečko Devjak, Predrag Dimitrijević (eds.), *Law on General Administrative Procedure: Contemporary Tendencies and Challenges*, Eurosfera & Partners, Institute of Comparative Law, Faculty of Management and Law, 2024, pp. 349-362.

Milica V. Matijević, Vesna Ćorić, "Anti-diskriminacione mere u okviru Evropske unije", in: Jovan Ćirić (ed.), *Pedeset godina Evropske unije*, Institut za uporedno pravo, Kancelarija za pridruživanje Evropskoj uniji, 2007, pp. 98-116.

Milica V. Matijević, Vesna Ćorić Erić, "Peacebuilding and the Conflict Resolution Theories", in: *Twenty Years of Human Security: Theoretical Foundations and Practical Applications*, Fakultet bezbednosti Univerziteta u Beogradu, Institut Français de Géopolitique - Université Paris 8, 2015, pp. 151-162.

Snježana Vasiljević, "The Legal Aspects of the Protection of Minorities in the Process of Stabilization and Association", in: Katarina Ott (ed.), *Croatian Accession to the European Union*, Vol. 2, 2004, pp. 249-272.

Vanessa Pupavac, *Language Rights: From Free Speech to Linguistic Governance*, Palgrave Macmillan, 2012. https://doi.org/10.1057/9781137284044

Vladimir Đurić, *Neteritorijalna manjinska autonomija/samouprava, Knj.1. Neteritorijalna manjinska autonomija/samouprava u uporednom pravu,* Institut za uporedno pravo, 2018.

Vladimir Đurić, "Proširenje EU i zaštita nacionalnih manjina: Novi izazovi i stare perspektive za zemlje Zapadnog Balkana", in: Dragan

Đukanović, Vladimir Trapara (eds.), *Evropska unija i Zapadni Balkan – Izazovi i perspektive*, Institut za međunarodnu politiku i privredu, 2014, pp. 270-294.

Will Kymlicka, "The Evolving Basis of European Norms of Minority Rights: Rights to Culture, Participation and Autonomy", in: Marc Weller, Denika Blacklock, Katherine Nobbs (eds.), *The Protection of Minorities in the Wider Europe*, Palgrave Macmillan, 2008, pp. 11-41. https://doi.org/10.1057/9780230582293_2

Wojciech Sadurski, "Minority Protection in Central Europe and Accession to the EU", in: Marc Weller, Denika Blacklock, Katherine Nobbs (eds.), *The Protection of Minorities in the Wider Europe*, Palgrave Macmillan, 2008, pp. 209-231. https://doi.org/10.1057/9780230582293_9

Articles

Ana Knežević Bojović, Milica V. Matijević, Mirjana Glintić, "International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation", in: *Balkan Yearbook of European and International Law 2021*, 2022, Springer, pp. 163-184. https://doi.org/10.1007/978-3-030-97431-2_8

Ann F. Bayefsky, "The Principle of Equality or Non-Discrimination in International Law", *Human Rights Law Journal,* 11, 1990, pp. 1-34.

Annelies Verstichel, "Elaborating A Catalogue of Best Practices of Effective Participation of National Minorities: Review of the Opinions of the Advisory Committee Regarding Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities", *European Yearbook of Minority Issues*, 2, 2004, pp. 165-195. https://doi.org/10.1163/221161103X00094

Carter Johnson, "The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe", *International Journal on Minority and Group Rights*, 13(1), 2006, pp. 27-51. https://doi.org/10.1163/157181106777069914

Colm O'Cinneide, "Positive Action and the Limits of Existing Law", *Maastricht Journal of European and Comparative Law,* 13, 2006, pp. 351-364. https://doi.org/10.1177/1023263X0601300307

David O. Brink, "Legal Theory, Legal Interpretation, and Judicial Review", *Philosophy & Public Affairs,* 17(2), 1998, pp. 105-148.

Gaetano Pentassuglia, "Monitoring Minority Rights in Europe: The Implementation Machinery of the Framework Convention for the Protection of National Minorities – With Special Reference to the Role of the Advisory Committee", *International Journal on Minority and Group Rights*, 6(4), 1999, pp. 417-462. https://doi.org/10.1163/15718119920907820

Giovanni Guidetti, Boike Rehbein, "Theoretical Approaches to Inequality in Economics and Sociology. A Preliminary Assessment", *Transcience*, 5/1, 2014, pp. 1-15.

Goran Bašić, Zoran Lutovac, "The Lack of Ethnically Sensitive Data in Serbia' Multiculturalism Policy"', *Stanovništvo*, 58(1), 2020, pp. 25-45. https://doi.org/10.2298/STNV200420004B

Frank Steketee, "The Framework Convention: A Piece of Art or a Tool for Action?", *International Journal of Minority and Group Rights*, 8, 2001, pp. 1-15. https://doi.org/10.1163/15718110120908240

Hugh Collins, "Discrimination, Equality and Social inclusion", *Modern Law Review,* 66, 2003, pp. 16-43. https://doi.org/10.1111/1468-2230.6601002

Ivana Krstić, "Manjinska prava u praksi Evropskog suda za ljudska prava", *Zbornik radova 36. Susreta Kopaoničke škole prirodnog prava – Slobodan Perović*, 3, 2023, pp. 369-390.

Katinka Beretka, "*De iure* potvrđenost multikulturalnog karaktera AP Vojvodine", *Pravni zapisi*, 9(1), 2018, pp. 141-161. https://doi.org/10.5937/pravzap0-16598

Katinka Beretka, "Language Rights and Multilingualism in Vojvodina*", International Journal on Minority and Group Rights*, 23(4), 2016, pp. 505-529. https://doi.org/10.1163/15718115-02304007

Katinka Beretka, Marina Andeva, "The Non-Existing EU Standards in National Minority Protection as Prerequisites for Successful European Integration: The Case of Macedonia and Serbia", *AICEI Proceedings*, 13(1), 2018.

Kristin Henrard, "Tracing Visions on Integration and/of Minorities: An Analysis of the Supervisory Practice of the FCNM", *International Community Law Review*, 13(4), 2011, pp. 333-360. https://doi.org/10.1163/187197311X602239

Kristin Henrard, "'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and Their Reflections in the Supervision of the FCNM and Several Human Rights Conventions", *International Journal on Minority and Group Rights*, 12(2), 2005, pp. 133-168. https://doi.org/10.1163/157181105774740606

Lidija R. Basta Fleiner, "Participation Rights Under the Framework Convention for the Protection of National Minorities (FCNM): Towards a Legal Framework Against Social and Economic Discrimination", *Zbornik radova Pravnog fakulteta u Nišu*, 65, 2013, pp. 19-36.

Mark Greenberg, "What Makes a Method of Legal Interpretation Correct? Legal Standards vs. Fundamental Determinants", *Harvard Law Review Forum*, 130(4), 2017, pp. 105-126.

Marko Davinić, Vuk Cucić, "Europeanization of General Administrative Procedure in Serbia", *Review of Central & East European Law*, 46(2), 2021, pp. 153-178. https://doi.org/10.1163/15730352-bja10045

Milica V. Matijević, "Navigating through the Substantive Equality Doctrine: Anti-Discrimination Law and Social Change", *Pravni zapisi*, 15(1), 2024, pp. 89-120. https://doi.org/10.5937/pravzap0-49917

Milica V. Matijević, "Adequate Representation of Persons Belonging to National Minorities in Public Sector: The Nature, Content and Scope of Obligations in the Comments of the Advisory Committee for the Framework Convention", *Strani pravni život*, 64(4), 2020, pp. 55-68. https://doi.org/10.5937/spz64-29799

Milica V. Matijević, "Afirmativne mere za zapošljavanje pripadnika nacionalnih manjina u državnoj upravi Republike Srbije – osvrt na postojeća rešenja", *Pravni život,* 11(3), 2019, pp. 589-605.

Milica V. Matijević, "Towards a Better Understanding of the Standard of Adequate Representation of Persons Belonging to National Minorities in Public Sector", *Strani pravni život,* 63(4), 2019, pp. 19-39. https://doi.org/10.5937/spz63-24844

Milica V. Matijević, Ana Zdravković, "Breaking the Invisible Cage: Limits of Law in Structural Discrimination, *Diritto, Immigrazione e Cittadinanza,* 3, 2024, pp. 1-18.

Milica V. Matijević, Vesna Ćorić Erić, "Mere afirmativne akcije: Terminološko određenje i uvodna razmatranja o sadržini pojma", *Strani pravni život,* 54(3), 2010, pp. 85-102.

Nada M. Raduški, "Nacionalne manjine u bilateralnim sporazumima Srbije sa zemljama u regionu", *Međunarodna politika*, 1174, 2019, pp. 5-21.

Nataša Kiš, "O nekim aspektima jezičke politike u Vojvodini kroz stavove prema jeziku", *Zbornik Matice srpske za filozofiju i lingvistiku*, 62(2), 2019, pp. 173-196.

Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity", *Queen's Law Journal,* 19, 1993, pp. 179-207.

Petra Kovač, "Who Benefits? Ethnic Bias and Equity in Access of Ethnic Minorities to Locally Provided Public Services in CEE", paper prepared for the 10th NISPAcee Annual Conference: Delivering Public Services in Central and Eastern Europe: Trends and Developments, 2002.

Predrag Dimitrijević, Dejan Vučetić, "Ostvarivanje prava na službenu upotrebu jezika i pisma prilikom upravnog postupanja u Republici Srbiji", *Zbornik Pravnog fakulteta u Nišu*, 70, 2015, pp. 229-252.

William Baude, Stephen E. Sachs, "The Law of Interpretation", *Harvard Law Review*, 130, 2017, pp. 1079-1147.

Tijana Vukojičić Tomić, "Suvremeni pristupi i modeli zapošljavanja društvenih manjina u javnoj upravi", *Hrvatska i komparativna javna uprava*, 17(3), 2017, pp. 365-388. https://doi.org/10.31297/hkju.17.3.2

Other publications

Aleksandar Vujić, Vladimir Vukićević, Ex-post Analysis of the Implementation of the Action Plan for the Exercise of the Rights of National Minorities, "Horizontal Facility for the Western Balkans and Turkey 2019-2022 - Promotion of Diversity and Equality in Serbia", Council of Europe, Ministry for Human and Minority Rights and Social Dialogue of the Republic of Serbia, June 2021.

Cristopher McCrudden, Sacha Prechal, The Concepts of Equality and Non-Discrimination in Europe: A Practical Approach, European Commission, 2011.

Goran Bašić, Ljubica Đorđević, Exercise of the Right to Official Use of Languages and Scripts of National Minorities in the Republic of Serbia, Protector of Citizens of the Republic of Serbia, 2010.

Marc De Vos, Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC, European Network of Legal Experts in the Non-Discrimination Field, June 2007.

National Minority Standards: A Compilation of OSCE and Council of Europe Texts, Council of Europe Publishing, 2007.

Tove Malloy *et al.*, Indicators for Assessing the Impact of the FCNM in its State Parties, European Academy Bolzano, 2009.

Websites

Ministry of State Administration and Local Self-Governance of the Republic of Serbia, Harmonisation of the special laws with the Law on General Administrative Procedure (Ministarstvo za državnu upravu i lokalnu samoupravu Republike Srbije, Usklađivanje posebnih zakona sa ZUP-om), https://mduls.gov.rs/reforma-javne-uprave/reforma-upravnog-postupka/uskladjivanje-posebnih-zakona-sa-ezupom/?script=lat (accessed 12.06.2024).

Official website of the city of Novi Sad (zvanična internet prezentacija Grada Novi Sad), at http://www.novisad.rs (accessed 03.12.2024).

Official website of the municipality of Pančevo (zvanična internet prezentacija opštine Pančevo), at http://www.pancevo.rs (accessed 03.12.2024).

Official website of the municipality of Srbobran (zvanična internet prezentacija opštine Srbobran), at https://www.srbobran.rs (accessed 03.12.2024).

Official website of the municipality of Vrbas (zvanična internet prezentacija opštine Vrbas) at https://www.vrbas.net (accessed 03.12.2024).

Official website of the National Council of the Hungarian National Minority – Committee for the official use of language and script (Nacionalni savet mađarske nacionalne manjine – Odbor za službenu upotrebu jezika i pisma) at https://www.mnt.org.rs/sr/rolunk/nyelvhasznalati-bizottsag (accessed 03.12.2024).

Official website of the Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities, Section dedicated to the languages in official use (Pokrajinski sekretarijat za obrazovanje, propise, upravu i nacionalne manjine – nacionalne zajednice) at https://www.puma.vojvodina.gov.rs/index.php?lang=7 (accessed 03.12.2024).

Protector of Citizens of the Republic of Serbia (Zaštitnik građana Republike Srbije), "Is avoiding to give a response a mechanism for protection of minority rights?" ("Izbegavanje odgovora mehanizam zaštite manjinskih prava?", 2012, at https://www.ombudsmanapv.org/riv/index.php/vesti/ostale-vesti/699-izbegavanje-odgovora-mehanizam-zastite-manjinskih-prava.html (accessed 03.12.2024).

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

341.234
351:342.724

MATIJEVIĆ, Milica V., 1977-
Adequate representation of persons belonging to national minorities in public bodies / Milica V. Matijević. - Belgrade : Institute of Comparative Law, 2024 (Beograd : Dogma). - 117 str. ; 24 cm

Tiraž 100. - Napomene i bibliografske reference uz tekst. - Bibliografija: str. 109-117.

ISBN 978-86-82582-30-4

а) Националне мањине -- Међународна заштита б) Националне мањине -- Јавни сектор

COBISS.SR-ID 161998601

IUS NULLO CONTINETUR LOCO
1956. BEOGRAD

ISBN 978-86-82582-30-4

9 788682 582304