

Lecture by Mr. Max VAN DER STOEL

First OSCE High Commissioner for National Minorities

Nearly all states in Europe are ethnically heterogeneous and are confronted with the problem of how to establish a balance between the rights and interests of majorities and minorities. In general, national minorities are constantly trying to protect and where possible to strengthen their position. Being numerically weaker, they seek to compensate for this by seeking stronger cohesion and sometimes building their own institutions.

In quite a number of states the majority tends to be rather suspicious of the minority. Will it be loyal to the state or will it try to create a state of its own or to join a neighbouring kin state? And where such suspicions do not exist, the majority is often concerned that the national minority is not willing to integrate, and is trying to seek its strength in isolation.

Quite often both the majority and the minority are at fault. The majority ought to be more aware that loyalty of the minority to the state and willingness to integrate can best be assured by policies aimed at maintaining a continuous dialogue with the minority, respecting its identity and granting it a say in decisions affecting its special interests. The minority, on the other hand, has to be aware that it cannot solve its problems in isolation and that it cannot be absent when at the state level decisions are being taken which affect majority and minority alike.

During 45 years of communist rule most minorities in Central and Eastern Europe had insufficient opportunities to protect their identity and their interests. As a consequence, when communism collapsed in 1989, their leaders were determined to ensure that their minority rights and interests would be fully respected by the new regimes. In several states their demands led to considerable tensions. It is against this background that the OSCE (then still CSCE) decided to formulate a number of principles regarding the rights of minorities in its Document of the 1990 Copenhagen meeting of the Conference on the Human Dimension of the CSCE¹. Why the CSCE felt that this was so important, is clearly formulated in paragraph 30 of the Copenhagen Document: "Respect for the rights of persons belonging to national minorities as part of universally recognised human rights is an essential factor for peace, justice, stability and democracy in the participating states..."

It is essential for the maintenance of the identity of national minorities that each succeeding generation will be made familiar with its language, history and culture. Therefore, national minorities are especially eager to ensure that these subjects receive adequate attention during the educational process. Paragraph 34 of the CSCE Copenhagen Document deals with this subject: "The participating states will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the states concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue..."

The formulation of this paragraph is a very balanced one. On the one hand it expresses itself clearly in favour of educational rights for the minority, but on the other hand it stresses the need for persons belonging to national minorities to learn the majority language. Rightly so, because otherwise the chances of a successful integration process of persons belonging to national minorities would be seriously undermined. The Copenhagen Document is not legally binding. But all states participating in the OSCE have approved it and have therefore accepted the political commitment to treat national minorities according to the principles laid down in it. However, on the occasion of its adoption, Turkey made an interpretative statement which said i.a. : "In Turkey's concept the term "national minorities" only encompasses population groups whose status are subject to bilateral or multilateral international treaties".

¹ For the text of the Copenhagen Document, see <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>
For an overview and early comment, see Thomas Buergenthal, "The Copenhagen CSCE meeting: A new public order for Europe", *Human Rights Law Journal*, Volume 11, Parts 1-2, pp. 217-232.

It is obvious that Turkey made this reservation in order to ensure that the Copenhagen Document would not be used in discussion regarding the Kurdish minority in Turkey. In addition, Turkey distanced itself even more from the Copenhagen Document by making a further reservation stating:

“The provisions of the document of the Copenhagen meeting of the Conference on the Human Dimension of the OSCE shall be applied in conformity with its constitution and national legislation”.

Irrespective of the applicability of minority rights (whether “national”, “ethnic”, “linguistic” or “religious”), both international standards and Turkey’s own Constitution require that everyone should be equal before the law and specifically not to suffer discrimination on the basis of their ethnicity, language or religion. From this perspective, it would appear that still quite a lot could be achieved should these principles be carefully and fully applied.

The Framework Convention for the Protection of National Minorities

In November 1994 the Council of Europe presented the Framework Convention for the Protection of National Minorities². In many ways, it was an effort to translate the provisions of the Copenhagen Document in a legally binding text. However, this did not mean that there were no other differences. A typical example is the provision on educational rights of persons belonging to national minorities. Article 14 of the Framework Convention reads as follows:

“1. The parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in that language.

3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language”.

It is obvious that article 14 of the Framework Convention is more restrictive than paragraph 34 of the Copenhagen Document. This becomes even more clear when one reads the commentary the Council of Europe has provided regarding this article. Regarding paragraph 1 of article 14 it begins to underline the importance of the right of every person belonging to a national minority to learn his or her minority language. It states that it “concerns one of the principal means by which individuals can assert and preserve their identity”. But then it hastens to add: “without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the state”.

On paragraph 2 of article 14 the commentary states i.a.: “In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion”.

Regarding instruction of or in minority languages, the commentary adds: “The wording ‘as far as possible’ indicates that such instruction is dependent on the available resources of the Party concerned”.

I have to come to the conclusion that article 14 of the Framework Convention, while on the one hand advocating instruction of or in minority languages, provides governments with an easy excuse when asked to give it financial support: we have no money available for this purpose. If applied in this way it is highly doubtful that the Framework Convention can have a significant impact on the further growth of minority language education.

It can of course be argued that the Framework Convention acquires additional weight because it provides for a monitoring mechanism. According to article 25 a Contracting Party shall transmit

² For the full text of the Framework Convention, see <http://conventions.coe.int/treaty/EN/cadreprincipal.htm>
For an overview of the Convention, including its modest implementation regime, see Frank Steketee, “The Framework Convention: A Piece of Art or a Tool for Action?”, *International Journal of Minority and Group Rights*, Volume 8, No. 1 (2001), pp. 1-15.

to the Secretary-General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in the Framework Convention within the period of one year following its entry into force in respect to this Party. Thereafter each Party shall transmit to the Secretary-General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of the Convention. It is up to the Committee of Ministers to give an opinion on the state reports. In this task it shall be assisted by an advisory committee of independent experts.

In theory this monitoring system seems to be an effective instrument to exert pressure on a state if it does not respect the provisions of the Convention. However, it ought not to be forgotten that in the Committee of Ministers (in practice their deputies) states which have not become Party to the Convention or have made reservations when doing so can be expected to oppose strong criticism. And of course ambiguously worded provisions like article 14 on minority education do not provide a solid basis for critical comments. Moreover, after the initial report, the periodic reporting cycle has been set at five years – this means in effect that many elected governments will simply not be accountable during their period of governance.

The drafters of the Convention have refrained from trying to find a definition of national minorities³. This is because it was not possible to reach agreement amongst the members states of the Council of Europe on a definition. However, this also enabled states becoming parties to the Convention to make certain restrictions. For instance Germany and Austria made the reservation that the Convention would only be applicable to persons belonging to national minorities who were citizens of their country. Estonia even went a step further. Apart from insisting on citizenship (especially relevant in Estonia because 20% of the population has no Estonian citizenship) it also restricted the applicability of the Convention to those citizens of Estonia who maintain longstanding, firm and lasting ties with Estonia.

The Hague Recommendations regarding the education rights of national minorities⁴

In 1996 the OSCE High Commissioner on National Minorities, aware that issues regarding minority language education were often a subject of controversies between governments and minorities in the states he had visited, decided to ask a group of internationally recognised experts to draft a number of recommendations regarding an appropriate and coherent application of minority education rights in the OSCE region. He felt that this was even more important because the provisions regarding minority education (especially the often contentious issue of the language of instruction) in the Framework Convention are of a very general nature. Among the experts consulted were, on the one hand, jurists specialising in international law and, on the other hand, linguists and educationalists specialising on the situation and needs of minorities.

³ In order to carry out my mandate as OSCE High Commissioner on National Minorities, I fashioned my own working definition, which was as follows:

“First of all, a minority is a group with linguistic, ethnic, or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity.”

For a substantial treatment of the different aspects of this complex subject, see John Packer, “Problems in Defining Minorities” in Deidre Fottrell and Bill Bowring (eds.), *Minority and Group Rights in the New Millennium*, The Hague: Kluwer Law International (1999), pp. 223-274.

⁴ For the full text of The Hague Recommendations (available in fifteen languages), see <http://www.osce.org/institutions/hcnm/recommendations/hague/index.php3>. The full text is also available, together with a number of scholarly articles, in the *International Journal of Minority and Group Rights*, Volume 4, No. 2 (1996/97), pp. 105-213.

The experts chose as their starting point that, on the one hand, the right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of the minority language during the educational process, but that, on the other hand, persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the state language.

This basic approach is reflected in the remarks the experts made on the role of minority languages at the various levels of education⁵. At the level of primary education the need to safeguard the identity of the minority prevails. The experts recommend that the curriculum should be taught essentially in the minority language and that the minority language should be taught as a subject on a regular basis. At the same time they propose that the official state language should also be taught as a subject on a regular basis. At the end of the period, a few practical or non-theoretical subjects should be taught through the medium of the state language.

As far as secondary education is concerned, the experts feel that a greater accent has to be placed on the need to prepare for integration in the wider national society. While proposing that a substantial part of the curriculum will continue to be taught in the minority language, they also make it clear that throughout the secondary school period the number of subjects taught in the state language should gradually be increased.

Regarding tertiary education the experts pronounce themselves in favour of access for persons belonging to national minorities to education in their own language, provided they have demonstrated the need for it and when their numerical strength justifies it. They do not exclude the possibility for persons belonging to national minorities to establish their own educational institutions at the tertiary level, but make clear their preference for them to seek the required facilities within existing educational structures. The experts motivate their position by pointing out that the entrenchment of parallel educational institutions at university level could contribute to the isolation of the minority from the majority. With the need for integration in mind, they come to the conclusion that the intellectual and cultural development of majorities and minorities should not take place in isolation.

The Hague Recommendations are not legally binding – and in any case are only recommendations. But they have received considerable attention, also because an eminent group of international experts formulated them. They provide valuable guidelines for governments prepared to put into practice the general principles laid down in the relevant international instruments, especially the Copenhagen Document and the Framework Convention, regarding the educational rights of national minorities.

Present tensions regarding minority language education issues

As High Commissioner on National Minorities, I always used The Hague Recommendations as guidelines when I was confronted with tensions between minorities and governments regarding minority language education. The nature of these tensions differed from country to country, and some disappeared, often as a consequence of a change in government. This was for instance the case in Slovakia, where Hungarians had a difficult time under the nationalist government of President Meciar, which frequently dismissed headmasters for political reasons and even made plans to forbid persons of Hungarian ethnicity to teach the Slovak language, history and geography in Hungarian schools. Since a new government took over, there are no longer major frictions.

In Estonia and Latvia the governments are eager to strengthen the position of the respective state languages which were very much weakened during the long years of Soviet domination. This led to steps to increase the number of hours of teaching in the state language in Russian schools, even though the shortage of qualified Estonian and Latvian language teachers might delay this

⁵ For a good overview of minority language use in the context of education, see Patrick Thornberry, “The Education Rights of Minorities”, in Zdenka Machnyikova, John Packer and Steven R. Ratner (eds.), Contemporary Issues in the Protection of Minorities in Europe, Kehl am Rhein: N.P. Engel Verlag (forthcoming 2003).

process. The plans, which are opposed by the Russian minorities, might eventually lead to a reduction of Russian language teaching in secondary schools to 40% of the available time in Estonia, and to 30% in Latvia.

Undoubtedly there will be more frictions in several European states regarding the role of minority languages in secondary education. But it seems that in a number of states the greatest tensions are presently caused by the demand of national minorities to have their own state funded universities. Quite often the Swedish language Abo Akademi in Finland is seen as a model.

Recently the Hungarian party in Slovakia succeeded in getting the agreement of its partners in the new coalition government for the creation of a new state funded Hungarian language university.

In Romania, the UDMR (the party of the Hungarian minority) is also insisting on the creation of an Hungarian language state university. However, this idea has so far been rejected by a clear majority in the Romanian parliament, and it does not seem likely that this situation will change soon. On the other hand, in 1999 the parliament did agree on a new education law which provided more possibilities for Hungarian language teaching at existing universities.

As OSCE High Commissioner on National Minorities, I tried to open the door for a compromise solution by starting a dialogue with the leadership of the Babes Bolyai University in Cluj, which had already begun to move towards a multicultural system by introducing Hungarian and German language courses in a number of subjects. At my request, a number of international education experts drew up a number of recommendations regarding the increase of the number of subjects taught in the minority languages and the revision of the university charter in such a way that full equality of the three lines of study – Romanian, Hungarian and German – would be assured. The positive attitude of the rector, Mr. Marga (who was also Minister of Education at the time), helped considerably in ensuring the acceptance of most of our proposals.

However, the UDMR was not satisfied with the further expansion of the multicultural system at the Babes Bolyai University. It continued to insist on the need for a separate Hungarian language state university. As a first step in that direction, a private university – Sapientia – was set up. Without state financial assistance, it will have few opportunities to expand. It receives most of its support from Hungary.

Clearly the Hungarian parties in both Slovakia and Romania prefer a system of separate higher education. This can perhaps be partially explained by their fear that in a common higher education institution for majorities and minorities the interests of the majority tend to prevail. But it could also be explained by a reluctance to follow the path of integration which some leaders of these minorities demonstrate.

In Macedonia the question of educational rights has been a major political issue for many years and still remains on the top of the agenda. The Albanians were deeply dissatisfied about the very minor role which their language played in the main state university in Skopje. Ten years ago it was restricted to Albanian history and arts; it took a long time before teacher-training in the Albanian language was allowed, and then only for the first four years of primary school. In 1994 the growing dissatisfaction about the limited role of Albanian language teaching at Skopje university led to the creation by Albanian radicals of an Albanian language university in Tetovo. As this happened without consultation and approval of the education authorities, it was declared illegal by the government; its diplomas were not recognised. This situation persists until the present day. The government tolerates the university, but the Macedonian parties continue to insist that recognition can only take place when the university meets the requirements for recognition as laid down in the law on higher education.

Many experts believe that the university in its present state would not be able to meet them. Though there are some good professors, the quality of the education appears to be very poor in many faculties. In addition many students have not completed their secondary school studies.

In an effort to meet the urgent need for better Albanian language education, I took the initiative to create a private university, in which teaching in the Albanian language plays an important role

while at the same time its doors are open for students of other ethnic groups in Macedonia. With a view to promoting integration, teaching takes place in the Albanian, Macedonian and English languages. This university, named the South East European University, is therefore a multicultural institution which, in accordance with the Hague Recommendations, tries to provide common university education for ethnic Albanians and Macedonians and others⁶. One of the major problems in Macedonia is that the country is essentially divided in two separate ethnic communities which have very few contacts and therefore scarcely know each other. Common university education could be a contribution to better mutual understanding.

The European Union and minority rights

In 1993 the European Council, during its Copenhagen meeting, decided that states applying for membership would also have to meet certain political conditions, including “respect for and protection of minority rights”. These were no empty words. The European Commission began a process of careful monitoring of the minority policies of applicant states, consulting the office of the OSCE High Commissioner on National Minorities before drafting an assessment of their minority-related policies in its annual reports on the progress of the negotiations regarding their entry. I have no doubt that this policy of the European Commission led to acceptance of recommendations of the High Commissioner which the state concerned would otherwise have rejected or only partially accepted. It probably also led to the abandonment of policies or legislation unfavourable for the minorities which otherwise would have been introduced.

As the present High Commissioner, Mr. Rolf Ekeus, has pointed out in a speech in Copenhagen on 5 November 2002⁷, this beneficial influence on minority policies of a number of states will come to a sudden end when these states will become members of the European Union, probably in 2004. The European Union has never developed standards regarding minority rights for its member states. It would be a logical step to introduce them as soon as possible, but there are clear indications that quite a number of present and future member states are reluctant to agree to this.

Even worse, there are indications that governments of new member states will argue that the willingness of the European Union to accept their entry constitutes also a recognition that their minority policies have successfully passed the test. This in turn will make them more reluctant to accept the continued monitoring by and engagement of the OSCE High Commissioner on National Minorities.

This reasoning is of course unacceptable. Even if on the date of entry of a given state the minority situation would seem to meet the norms as laid down in the Copenhagen Document and other international instruments (which are also standards stipulated in the Europe Agreements concluded with the EU), new policies or new laws can subsequently be introduced which constitute a clear violation of its commitments. The High Commissioner has the right, even the duty, to continue his activities in the new member states of the European Union and to make recommendations whenever he thinks that this is appropriate. This certainly also applies to issues relating to the educational rights of minorities, which might cause new frictions in these states. Equally, should such situations arise in or between existing European Union Member States, which would fall within the mandate of the OSCE HCNM, he has to address them.

Some final remarks

Special attention has to be given to the educational situation of the Roma in Europe, which is extremely bad⁸. There is a tendency to attribute the failure of effective education for them to the parents, who sometimes keep their children away from the schools. But this is a far too simplistic approach to this problem. It ought not to be forgotten that many Roma children have a limited

⁶ For information on the South East European University, see <http://www.see-university.com>.

⁷ “From the Copenhagen Criteria to the Copenhagen Summit. The Protection of National Minorities in an Enlarging Europe”, found at <http://www.osce.org/hcnm/documents/speeches/2002/index.php3>.

⁸ During my tenure as High Commissioner, I issued two reports (the first on the express request of the participating States) on the situation of Roma and Sinti in the OSCE area; the full texts of the reports (dated September 1993 and April 2000) are available at: <http://www.osce.org/hcnm/documents/reports/>.

knowledge of the state language, and as a consequence they are often not able to follow the lessons properly. In addition they frequently do not have the benefit of visiting kindergartens which provide appropriate preparation for their role as pupils at primary schools. They also suffer from broader social problems within their families and communities (such as very high unemployment) which negatively effect their preparedness for and attendance at schools. Some therefore get put into so-called "special schools" which retards their learning.

The failure of the primary school system to adapt to the special needs of the Roma children has also as a consequence that few of them receive secondary education and that in the various fields of tertiary education Roma students are usually a rarity. And so the cycle of unemployment and marginalisation continues.

A last remark. Usually the discussions on educational problems of minorities concentrate on the so-called traditional minorities, which have lived in a specific region for centuries. But is it not high time to give much more attention to the educational problems of the new minorities? Millions of people have come to Europe from other continents in the last 30 years. Their integration often causes problems which are similar to but often more complicated than those relating to the traditional minorities. Perhaps one has to use stronger words: one sees more separation than integration, certainly also at the schools. But what does that mean for the future of our societies? It is high time that we give this question the priority which it so clearly needs.