

The Oslo Recommendations regarding the Linguistic Rights of National Minorities & Explanatory Note

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INTRODUCTION

In its Helsinki Decisions of July 1992, the Organization for Security and Cooperation in Europe (OSCE) established the position of High Commissioner on National Minorities to be "an instrument of conflict prevention at the earliest possible stage". This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993, Mr. Max van der Stoep took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament and Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. Van der Stoep turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in the following States: Albania, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed obligations relating to

national minorities. It is also important to note that all OSCE States are bound by United Nations obligations relating to human rights, including minority rights, and that the great majority of OSCE States are also bound by the standards of the Council of Europe.

After five years of intense activity, the HCNM has been able to identify certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. The linguistic rights of national minorities, i.e. the right of persons belonging to national minorities to use their language in the private and public spheres, is such an issue. International human rights instruments refer to this right in a number of different contexts. On the one hand, language is a personal matter closely connected with identity. On the other hand, language is an essential tool of social organisation which in many situations becomes a matter of public interest. Certainly, the use of language bears on numerous aspects of a State's functioning. In a democratic State committed to human rights, the accommodation of existing diversity thus becomes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions.

It is with this in mind that, in the summer of 1996, the HCNM requested the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognised experts with a view to receiving their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. A similar request from the HCNM had previously resulted in the elaboration of **The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report**.¹ Insofar as The Hague Recommendations address comprehensively the use of the language or languages of national minorities in the field of education, it was decided to exclude this issue from consideration of the experts.

The Foundation on Inter-Ethnic Relations – a non-governmental organisation established in 1993 to carry out specialised activities in support of the HCNM – facilitated a series of consultations of experts from various pertinent disciplines, including two meetings in Oslo and one in The Hague. Among the experts

¹ Copies of The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report (October 1996) are available in several languages from the OSCE Office of the High Commissioner on National Minorities.

consulted were jurists specialising in international law, as well as linguists, advocates and policy analysts specialising in the situations and needs of minorities. Specifically, the experts were:

Professor Gudmundur Alfredsson, Co-Director, Raoul Wallenberg Institute (Sweden); Professor Asbjørn Eide, Senior Fellow, Norwegian Institute of Human Rights (Norway); Ms. Angelita Kamenska, Senior Researcher, Latvian Centre for Human Rights and Ethnic Studies (Latvia); Mr. Dónall Ó Riagáin, Secretary General, European Bureau of Lesser Used Languages (Ireland); Ms. Beate Slydal, Advisor, Norwegian Forum for the Freedom of Expression (Norway); Dr. Miquel Strubell, Director, Institute of Catalan Sociolinguistics, Government of Catalonia (Spain); Professor György Szepe, Department of Language Sciences at Janus Panonius University (Hungary); Professor Patrick Thornberry, Department of Law, Keele University (United Kingdom); Dr. Fernand de Varennes, Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict (Australia); Professor Bruno de Witte, Faculty of Law, University of Maastricht (the Netherlands); Mr. Jean-Marie Woehrling, Institut de droit local alsacien-mosellan (France).

Insofar as existing standards of minority rights are part of human rights, the starting point for the consultations was to presume compliance by States with all other human rights obligations including, in particular, equality and freedom from discrimination, freedom of expression, freedom of assembly and of association, as well as all the rights and freedoms of persons belonging to national minorities.

It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Insofar as the use of language is also a fundamentally communicative matter, the essential social dimension of the human experience was also fully presumed.

The resultant Oslo Recommendations Regarding the Linguistic Rights of National Minorities attempt to clarify, in relatively straight-forward language, the content of minority language rights generally applicable in the situations in which the HCNM is involved. In addition, the standards have been interpreted in such a

way as to ensure their coherence in application. The Recommendations are divided into sub-headings which respond to the language related issues which arise in practice. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is to be found. It is intended that each Recommendation is read in conjunction with the specifically relevant paragraphs of the Explanatory Note.

It is hoped that these Recommendations will provide a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere.

Although these Recommendations refer to the use of language by persons belonging to national minorities, it is to be noted that the thrust of these Recommendations and the international instruments from which they derive could potentially apply to other types of minorities. The Recommendations which follow below are meant to clarify the existing body of rights. They are not meant to restrict the human rights of any person or groups of persons.

THE OSLO RECOMMENDATIONS REGARDING THE LINGUISTIC RIGHTS OF NATIONAL MINORITIES

NAMES

- 1) Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.
- 2) Similarly, private entities such as cultural associations and business enterprises established by persons belonging to national minorities shall enjoy the same right with regard to their names.
- 3) In areas inhabited by significant numbers of persons belonging to a national minority and when there is sufficient demand, public authorities shall make provision for the display, also in the minority language, of local names, street names and other topographical indications intended for the public.

RELIGION

- 4) In professing and practicing his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice.
- 5) For those religious ceremonies or acts pertaining also to civil status and which have legal effect within the State concerned, the State may require that certificates and documents pertaining to such status be produced also in the official language or languages of the State. The State may require that registers pertaining to civil status be kept by the religious authorities also in the official language or languages of the State.

COMMUNITY LIFE AND NGOs

- 6) All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organisations, associations and institutions. These entities may use the language(s) of their choosing. The State may not discriminate against these entities on the basis of language nor shall it unduly restrict the right of these entities to seek sources of funding from the State budget, international sources or the private sector.
- 7) If the State actively supports activities in, among others, the social, cultural and sports spheres, an equitable share of the total resources made available by the State shall go to support those similar activities undertaken by persons belonging to national minorities. State financial support for activities which take place in the language(s) of persons belonging to national minorities in such spheres shall be granted on a non-discriminatory basis.

THE MEDIA

- 8) Persons belonging to national minorities have the right to establish and maintain their own minority language media. State regulation of the broadcast media shall be based on objective and non-discriminatory criteria and shall not be used to restrict enjoyment of minority rights.
- 9) Persons belonging to national minorities should have access to broadcast time in their own language on publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs.
- 10) The independent nature of the programming of public and private media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of

programming should be independent and should include persons belonging to national minorities serving in their independent capacity.

- 11) Access to media originating from abroad shall not be unduly restricted. Such access should not justify a diminution of broadcast time allocated to the minority in the publicly funded media of the State of residence of the minorities concerned.

ECONOMIC LIFE

- 12) All persons, including persons belonging to national minorities, have the right to operate private enterprises in the language or languages of their choice. The State may require the additional use of the official language or languages of the State only where a legitimate public interest can be demonstrated, such as interests relating to the protection of workers or consumers, or in dealings between the enterprise and governmental authorities.

ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICES

- 13) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions. Similarly regional and/or local public institutions shall keep the appropriate civil registers also in the language of the national minority.
- 14) Persons belonging to national minorities shall have adequate possibilities to use their language in communications with administrative authorities especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers. Similarly, administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the

national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes.

- 15) In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

INDEPENDENT NATIONAL INSTITUTIONS

- 16) States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.

THE JUDICIAL AUTHORITIES

- 17) All persons, including persons belonging to a national minority, have the right to be informed promptly, in a language they understand, of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them, and to defend themselves in this language, if necessary with the free assistance of an interpreter, before trial, during trial and on appeal.
- 18) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator.
- 19) In those regions and localities in which persons belonging to a national minority live in significant numbers and where the desire for it has been expressed, States should give due consideration to the feasibility of

conducting all judicial proceedings affecting such persons in the language of the minority.

DEPRIVATION OF LIBERTY

- 20) The director of a penal institution and other personnel of the institution shall be able to speak the language or languages of the greatest number of prisoners, or a language understood by the greatest number of them. Recruitment and/or training programmes should be directed towards this end. Whenever necessary, the services of an interpreter shall be used.
- 21) Detained persons belonging to national minorities shall have the right to use the language of their choice in communications with inmates as well as with others. Authorities shall, wherever possible, adopt measures to enable prisoners to communicate in their own language both orally and in personal correspondence, within the limitations prescribed by law. In this relation, a detained or imprisoned person should, in general, be kept in a place of detention or imprisonment near his or her usual place of residence.

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EXPLANATORY NOTE TO THE OSLO RECOMMENDATIONS REGARDING THE LINGUISTIC RIGHTS OF NATIONAL MINORITIES

GENERAL INTRODUCTION

Article 1 of the **Universal Declaration of Human Rights** refers to the innate dignity of all human beings as the fundamental concept underlying all human rights standards. Article 1 of the **Declaration** states "All human beings are born free and equal in dignity and rights [...]." The importance of this article cannot be overestimated. Not only does it relate to human rights generally, it also provides one of the foundations for the linguistic rights of persons belonging to national minorities. Equality in dignity and rights presupposes respect for the individual's identity as a human being. Language is one of the most fundamental components of human identity. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language.

In this context, the **International Covenant on Civil and Political Rights** is of considerable importance. Article 2 of the **Covenant** requires States to ensure that the human rights of all individuals within their territory and subject to their jurisdiction will be ensured and respected "without distinction of any kind such as [...] language [...]." Article 19 of the **Covenant** guarantees freedom of expression which, as it is formulated in the **Covenant**, not only guarantees the right to impart or receive information and ideas of all sorts, regardless of frontiers, but also guarantees the right to do so in the medium or language of one's choice. The imparting and receiving of information also suggests people acting in community. In this context, Articles 21 and 22 of the **Covenant** guaranteeing the freedoms of peaceful assembly and association may be especially relevant.

Similarly, in Europe the freedom of expression stipulated in Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** shall be, according to Article 14 of the same convention, "secured without discrimination on any ground such as [...] language [...]." With expressed reference to both the **Universal Declaration of Human Rights** and the **European Convention for the Protection of Human Rights and Fundamental**

Freedoms, the Council of Europe's **Declaration on Freedom of Expression and Information** affirms "that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community". In this connection, the freedoms of peaceful assembly and association as guaranteed by Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** are important.

Within the context of the Organization for Security and Cooperation in Europe (OSCE), the same fundamental ideas of freedom of expression, assembly and association are enumerated in paragraphs 9.1–9.3 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension**.

In the **Charter of Paris for a New Europe**, the Heads of State and Government of the OSCE participating States "affirm that, without discrimination, every individual has the right to: [...] freedom of expression, freedom of association and peaceful assembly, [...]."

Article 27 of the **International Covenant on Civil and Political Rights** is another key provision which has direct bearing on the linguistic rights of national minorities. It affirms that "persons belonging to [...] minorities shall not be denied the right, in community with the other members of their group, to [...] use their own language".

Similarly, Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination". Article 10(1) of the Council of Europe's **Framework Convention for the Protection of National Minorities** stipulates that States will recognise the right of persons belonging to national minorities "to use freely and without interference his or her minority language, in private and in public, orally and in writing."

Although the instruments refer to the use of minority languages in public and in private, these same instruments do not precisely delimit the "public" as opposed to the "private" spheres. Indeed the spheres may overlap. This may well be the

case, for example, when individuals acting alone or in community with others seek to establish their own private media or schools. What might begin as a private initiative may become the subject of legitimate public interest. Such an interest may give rise to some public regulation.

The use of minority languages "in public and in private" by persons belonging to national minorities cannot be considered without making reference to education. Education issues as they relate to the languages of national minorities are treated in detail in *The Hague Recommendations Regarding the Education Rights of National Minorities* which were developed for the benefit of the OSCE High Commissioner on National Minorities by The Foundation on Inter-Ethnic Relations in collaboration with experts of international repute in the fields of both international human rights and education. The Hague Recommendations were developed with a view to facilitating a clearer understanding of the international instruments pertaining to the rights of persons belonging to national minorities in this area which is of such vital importance to the maintenance and development of the identity of persons belonging to national minorities.

International human rights instruments stipulate that human rights are universal and that they must be enjoyed equally and without discrimination. Most human rights, however, are not absolute. The instruments do foresee a limited number of situations in which States would be justified in restricting the application of certain rights. The restrictions permitted by international human rights law can be invoked in life-threatening emergencies and in situations which pose a threat to the rights and freedoms of others, or in situations which threaten public morals, public health, national security and the general welfare in a democratic society². In human rights law, restrictions on freedoms are to be interpreted restrictively.

The rights of persons belonging to national minorities to use their language(s) in public and in private as set forth and elaborated in *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* must be seen in a balanced context of full participation in the wider society. The Recommendations do not propose an isolationist approach, but rather one which encourages a

² The above mentioned limitations are included, e.g., in the following provisions:

Art. 30 Universal Declaration of Human Rights

Art. 19(3) International Covenant on Civil and Political Rights

Art. 10(2) European Convention for the Protection of Human Rights and Fundamental Freedoms

balance between the right of persons belonging to national minorities to maintain and develop their own identity, culture and language and the necessity of ensuring that they are able to integrate into the wider society as full and equal members. From this perspective, such integration is unlikely to take place without a sound knowledge of the official language(s) of the State. The prescription for such education is implied in Articles 13 and 14 of the **International Covenant on Economic, Social and Cultural Rights** and Articles 28 and 29 of the **Convention on the Rights of the Child** which confer a right to education and oblige the State to make education compulsory. At the same time, Article 14(3) of the **Framework Convention for the Protection of National Minorities** provides that the teaching of a minority language "shall be implemented without prejudice to the learning of the official language or the teaching in this language."

NAMES

- 1) Article 11(1) of the **Framework Convention for the Protection of National Minorities** stipulates that persons belonging to national minorities have the right to use their first name, their patronym and their surname in their own language. This right, the enjoyment of which is fundamental to one's personal identity, should be applied in light of the circumstances particular to each State. For example, public authorities would be justified in using the script of the official language or languages of the State to record the names of persons belonging to national minorities in their phonetic form. However this must be done in accordance with the language system and tradition of the national minority in question. In view of this very basic right relating closely to both the language and the identity of individuals, persons who have been forced by public authorities to give up their original or ancestral name(s) or whose name(s) have been changed against their will should be entitled to revert to them without having to incur any expenses.
- 2) Names are an important element of corporate identity as well, especially in the context of persons belonging to national minorities acting "in community". Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely

and without interference or any form of discrimination". Article 10(1) of the **Framework Convention for the Protection of National Minorities** stipulates that States will recognise the right of persons belonging to national minorities to "use freely and without interference his or her minority language, in private and in public, orally and in writing." Article 27 of the **International Covenant on Civil and Political Rights** declares that "persons belonging to [...] minorities shall not be denied the right, in community with other members of their group [...] to use their own language". A person's right to use his or her language in public, in community with others and without any interference or any form of discrimination is a strong indication that legal entities such as institutions, associations, organisations or business enterprises established and run by persons belonging to national minorities enjoy the right to adopt the name of their choice in their minority language. Such a corporate name should be recognised by the public authorities and used in accordance with the given community's language system and traditions.

- 3) Article 11(3) of the **Framework Convention** states that "in areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour [...] to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications". Refusal to recognise the validity of historic denominations of the kind described can constitute an attempt to revise history and to assimilate minorities, thus constituting a serious threat to the identity of persons belonging to minorities.

RELIGION

- 4) Article 27 of the **International Covenant on Civil and Political Rights** affirms that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group [...] to profess and practice their own religion, or to use their own language." Article 3(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic**

Minorities stipulates that "Persons belonging to minorities may exercise their rights [...] individually as well as in community with other members of their group, without any discrimination."

Religious belief and its practice "in community" is an area of great importance to many persons belonging to national minorities. In this context it is worth noting that the right to one's own religion is unlimited and guaranteed by Article 18(1) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. However, the freedom to manifest one's religion and beliefs, including public worship, is subject to a number of limitations listed in subsidiary paragraphs of the same articles. These limitations must be prescribed by law and relate to the protection of public safety, order, health, morals and the protection of the fundamental rights and freedoms of others. They must be reasonable and proportional to the end sought, and States may not invoke them with a view to stifling the legitimate spiritual, linguistic or cultural aspirations of persons belonging to national minorities.

In minority contexts, the practice of religion is often especially closely related to the preservation of cultural and linguistic identity. The right to use a minority language in public worship is as inherent as the right to establish religious institutions and the right to public worship itself. Hence, public authorities may not impose any undue restrictions on public worship nor on the use of any language in public worship, be it the mother tongue of the national minority in question or the liturgical language used by that community.

- 5) Religious acts such as wedding ceremonies or funerals may also constitute legal civil acts determining civil status in certain countries. In such cases, public interest must be taken into consideration. Keeping in mind the principle that administrative considerations should not prevent the enjoyment of human rights, public authorities should not impose any linguistic restrictions on religious communities. This should apply equally to any administrative functions which religious communities assume and which may overlap with civil jurisdiction. The State may, however, require the religious community to record legal civil acts for

which it has authority also in the official language or languages of the State so that the State may perform its legitimate regulatory and administrative tasks.

COMMUNITY LIFE AND NGOS

- 6) The collective life of persons belonging to national minorities, their acting "in community" as stated by the international instruments, finds its expression in numerous activities and areas of endeavour. Not least of these is the life of their non- governmental organisations, associations and institutions whose existence is usually vital for the maintenance and development of their identity and is generally seen as beneficial and conducive to the development of civil society and democratic values within States.

Articles 21 and 22 of the **International Covenant on Civil and Political Rights** and Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of persons to peaceful assembly and the freedom of association. The right of persons to act "in community" with other members of their group – their right to establish and manage their own non-governmental organisations, associations and institutions – is one of the hallmarks of an open and democratic society. Article 27 of that same **Covenant** affirms that "Persons belonging to [...] minorities shall not be denied the right, in community with the other members of their group, to [...] use their own language". As a rule, therefore, public authorities should not be involved in the internal affairs of such entities "acting in community", nor may they impose any limits on them, other than those permitted under international law. Article 17(2) of the **Framework Convention for the Protection of National Minorities** similarly engages States "not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels".

Article 2(1) of the **International Covenant on Civil and Political Rights** stipulates that each State undertakes "to ensure to all individuals

within its territory and subject to its jurisdiction the rights recognised in the present **Covenant**, without distinction of any kind such as [...] language". In line with this standard, States may not discriminate against NGOs on the basis of language nor impose any undue language requirements on them. This having been said, public authorities may require that such organisations, associations and institutions conform to the requirements of domestic law on the basis of a legitimate public interest, including the use of the official language(s) of the State in situations requiring interface with public bodies.

With regard to resources, paragraph 32.2 of the **Copenhagen Document** states that persons belonging to national minorities have the right "to establish and maintain their own educational, cultural and religious institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation." Accordingly, States should not prevent these entities from seeking financial resources from the State budget and from public international sources as well as from the private sector.

- 7) With regard to State financing of non-governmental activities in, among others, the social, cultural or sports fields, application of the principles of equality and non-discrimination requires that the public authorities provide an appropriate share of funding to similar activities taking place in the language of the national minorities living within their borders. In this context, Article 2(1) of the **International Covenant on Civil and Political Rights** stresses not only that there will be no distinction based on language in the treatment of individuals, but stipulates in Article 2(2) that States are required to "take the necessary steps [...] to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the [...] Covenant". Furthermore, Article 2(2) of the **International Covenant on the Elimination of Racial Discrimination**, (which seeks to eliminate any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin) stipulates that "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate

development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms [...]." Insofar as language is often a defining criterion of ethnicity as protected by the aforementioned convention, minority language communities may also be entitled to the benefits of such "special and concrete measures".

At the European level, paragraph 31 of the **Copenhagen Document** stipulates that "States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms". Paragraph 2 of Article 4 of the **Framework Convention for the Protection of National Minorities** obligates the States Parties "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"; paragraph 3 of the same Article further specifies that such "measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination." Moreover, Article 7(2) of the **European Charter for Regional or Minority Languages** stipulates that "the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of the languages and the rest of the population or which take account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages." In this context, therefore, public authorities should provide an equitable share of resources from the State budget to the activities of persons belonging to national minorities in, among others, the social, cultural and sports related fields. Such support can be made available through subsidies, public benefits and tax exemptions.

THE MEDIA

- 8) Article 19 of the **International Covenant on Civil and Political Rights**, which guarantees the right to hold opinions as well as the right to express them, is a fundamental point of reference regarding the role

and place of media in democratic societies. While Article 19(1) provides that "everyone shall have the right to hold opinions without interference", Article 19(2) proceeds to guarantee to everyone the freedom "to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through the media of his choice." Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantees the right to freedom of expression in a similar way. The member States of the Council of Europe reiterated in Article I of the **Declaration on the Freedom of Expression and Information** "their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society". On this basis, States declared in the same instrument that "in the field of information and mass media they seek to achieve [...] d) The existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions".

Article 9(1) of the **Framework Convention for the Protection of National Minorities** states clearly that persons belonging to national minorities are free "to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers [...]". Further on, the same provision engages States to "ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media." Article 9(3) of the **Framework Convention** stipulates that States "shall not hinder the creation and the use of printed media by persons belonging to national minorities." The same provision requires that "in the legal framework of sound radio and television broadcasting, [States] shall ensure, as far as possible [...] that persons belonging to national minorities are granted the possibility of creating and using their own media." It is also to be noted that media may constitute entities of the kind foreseen in *inter alia*, paragraph 32.2 of the **Copenhagen Document** which provides for the right of persons belonging to national minorities to "establish and maintain their own educational, cultural and religious institutions, organisations or associations [...]" Even though the media are not cited

expressly in this standard, the media often plays a fundamental role in the promotion and preservation of language, culture and identity.

Although there can be no doubt that persons belonging to national minorities have the right to establish and maintain private media, it is also true that this right is subject to the limitations provided by international law as well as such legitimate requirements of the State regarding the regulation of the media. Article 9(2) of the **Framework Convention** makes this very clear by underlining that the freedom of expression referred to in article 9(1) of the **Convention** "shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises." Regulatory requirements, where justified and necessary, may not be used to undermine the enjoyment of the right.

- 9) The issue of access to publicly funded media is closely linked with the concept of freedom of expression. Article 9(1) of the **Framework Convention** stipulates that the freedom of expression of persons belonging to national minorities includes the freedom to impart information and ideas in the minority language, without interference by public authorities, and goes on to say that "members of minorities shall not be discriminated against in their access to the media." Article 9(4) of the **Framework Convention** stipulates that "Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities." This implies that a national minority consisting of a substantial number of members should be given access to its fair share of broadcast time, on public radio and/or television, with the numerical size of the minority in question having a bearing on its share of broadcast time.

Numerical strength and concentration, however, cannot be seen as the only criteria when judging the amount of broadcast time to be allocated to any given national minority. In the case of smaller communities, consideration must be given to the viable minimum of time and resources without which a smaller minority would not meaningfully be able to avail itself of the media.

Moreover, the quality of the time allotted to minority programming is an issue that needs to be approached in a reasonable, non-discriminatory manner. The time-slots allotted to minority language programming should be such as to ensure that persons belonging to a national minority can enjoy programming in their language in a meaningful way. Hence, public authorities should ensure that this programming is transmitted at reasonable times of the day.

- 10) In an open and democratic society the content of media programming should not be unduly censored by the public authorities. The freedom of expression as guaranteed by Article 19(1) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** is important in this regard. Any restrictions which might be imposed by the public authorities must be in line with Article 19(3) of the **Covenant** which stipulates that these restrictions "shall only be such as are provided by law and are necessary a) For the respect of the rights and reputations of others, b) For the protection of national security or of public order (*ordre public*), or of public health and morals." Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates almost identical restrictions on any interference by public authorities with the enjoyment of freedom of expression.

Mechanisms should be put in place to ensure that the public media programming developed by or on behalf of national minorities reflects the interests and desires of the community's members and is seen by them as independent. In this context, the participation of persons belonging to national minorities (acting in their private capacity) in the editorial process would go a long way in ensuring that the independent nature of the media would be preserved and that it would be responsive to the needs of the communities to be served.

In line with the principle of equality and non-discrimination, the composition of public institutions should be reflective of the populations they are designed to serve. This also applies to public media. Article 15 of the **Framework Convention** engages States to "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." Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** is more explicit in committing States to "pursue a national policy designed to promote [...] equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." The non-discriminatory hiring of persons belonging to national minorities to work in the media will contribute to the representativity and objectivity of the media.

- 11) In keeping with the spirit of Articles 19(2) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **Framework Convention for the Protection of National Minorities** and of the principle of non-discrimination, access to programming in the language of persons belonging to a national minority, transmitted from another State or from the "kin-State", should not justify a diminution of programme time allotted to the minority on the public media of the State in which its members live.

Transfrontier access to information and media networks is a fundamental element of the right to information which, in the context of accelerated technological progress, is of growing importance. Consequently, when cable licensing is involved, for example, it is not legitimate for a State to refuse to license television or radio stations based in a kin-State when the desire for access to these stations has been clearly expressed by the national minority concerned. This right applies not only to cable media but also to electronic information networks in the language of the national minority.

As a general matter, the member States of the Council of Europe resolved in Article III(c) of the **Declaration on the Freedom of Expression and Information** "to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures". In relation to media contacts across

frontiers, States should conform their policies to the spirit of this provision.

ECONOMIC LIFE

- 12) International instruments make little reference to the rights of persons belonging to national minorities in the field of economic activity. International instruments do, however, refer to the right of persons belonging to national minorities to use their language in public and in private, freely and without any form of discrimination, orally and in writing, individually and with others. Article 19(2) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee freedom of expression with respect not only to ideas and opinions which may be transmitted to others (i.e. the content of communications), but also to language as a medium of communication. These rights, coupled with the right to equality and non-discrimination, imply the right of persons belonging to national minorities to run their businesses in the language of their choice. In view of the importance to private entrepreneurs to be able to communicate effectively with their clientele and to pursue their initiatives in fair conditions, there should be no undue restrictions on their free choice of language.

Article 11(2) of the **Framework Convention** stipulates that "every person belonging to a national minority has the right to display in his or her minority language, signs, inscriptions and other information of a private nature visible to the public." In the **Framework Convention** the expression "of a private nature" refers to all that is not official. Hence, the State may not impose any restrictions on the choice of language in the administration of private business enterprises.

Notwithstanding the above, the State may require that the official language or languages of the State be accommodated in those sectors of economic activity which affect the enjoyment of the rights of others or require exchange and communication with public bodies. This follows from the permissible restrictions on freedom of expression as stipulated

in Article 19(3) of the **International Covenant on Civil and Political Rights** and Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. While the limited permissible restrictions expressed in the aforementioned articles could justify restrictions on the content of communications, they would never justify restrictions on the use of a language as a medium of communication. However, protection of the rights and freedoms of others and the limited requirements of public administration may well justify specific prescriptions for the additional use of the official language or languages of the State. This would apply to sectors of activity such as workplace health and safety, consumer protection, labour relations, taxation, financial reporting, State health and unemployment insurance and transportation, depending on the circumstances. On the basis of a legitimate public interest, the State could, in addition to the use of any other language, also require that the official language or languages of the State be accommodated in such business activities as public signage and labelling – as expressly stated in paragraph 60 of the **Explanatory Report to the Framework Convention for the Protection of National Minorities**. In sum, the State could never prohibit the use of a language, but it could, on the basis of a legitimate public interest, prescribe the additional use of the official language or languages of the State.

In keeping with the logic of legitimate public interest, any requirement(s) for the use of language which may be prescribed by the State must be proportional to the public interest to be served. The proportionality of any requirement is to be determined by the extent to which it is necessary. Accordingly, for example, in the public interest of workplace health and safety, the State could require private factories to post safety notices in the official language or languages of the State in addition to the chosen language(s) of the enterprise. Similarly, in the interest of accurate public administration in relation to taxation, the State could require that administrative forms be submitted in the official language or languages of the State and that, in the case of an audit by the public authorities, relevant records be made available also in the official language or languages of the State; the latter eventuality would not require that private enterprise maintain all records in the official

language or languages of the State, but only that the burden of possible translation rests with the private enterprise. This is without prejudice to the possible entitlement of persons belonging to national minorities to use their language(s) in communications with administrative authorities as foreseen in Article 10(2) of the **Framework Convention for the Protection of National Minorities**.

ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICES

- 13/14/15) OSCE Participating States are committed to taking measures which will contribute to creating a dynamic environment, conducive not only to the maintenance of the identity of persons belonging to national minorities (including their language) but also to their development and promotion. As a consequence, these States have undertaken to respect "the right of persons belonging to national minorities to effective participation in public affairs" as outlined in paragraph 35 of the **Copenhagen Document**. Article 10(2) of the **Framework Convention for the Protection of National Minorities** expressly requires States to "make possible the use of minority languages in communications with administrative authorities." Paragraph 35 of the **Copenhagen Document** also makes reference to the possibility of creating an environment that would be conducive to the participation of national minorities in public affairs, in their own language, by establishing "appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of minorities in accordance with the policies of the State concerned". Article 15 of the **Framework Convention** engages States to "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." These provisions engage public authorities to enable persons belonging to national minorities to deal with local authorities in their language or to receive civil certificates and attestations in their own language. In line with the principles of equality and non-discrimination, these provisions also imply a dynamic participatory relationship wherein the language of the minority may be a full-fledged vehicle of communication in local political life and in the

interface between citizens and public authorities including in the provision of public services.

The ethnic representativity of administrative institutions and agencies designed to serve the population is usually reflective of a pluralistic, open and non-discriminatory society. In order to counter the effects of past or existing discrimination within the system, Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** requires States to "pursue a national policy designed to promote [...] equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

When designing and implementing programmes and services intended to serve the public, it is reasonable to expect that governments committed to the principles outlined above should take into consideration the expressed desires of persons belonging to national minorities as well as the principle of numerical justification. Where the need is expressed and the numbers are significant, equity requires that taxpayers belonging to national minorities have access to services also in their own language. This is particularly so in the case of health and social services which affect the quality of peoples' lives in an immediate and fundamental manner.

In line with the principles of equality and non-discrimination, administrative authorities are expected to deal with persons belonging to national minorities in an inclusive and equitable manner. States must recognise the demographic realities of the regions under their jurisdiction. Above all, States should not seek to avoid their obligations by changing the demographic reality of a region. Specifically Article 16 of the **Framework Convention** engages States to refrain from measures which might arbitrarily alter the proportion of the population in areas inhabited by persons belonging to national minorities with the objective of restricting the rights of these minorities. Such measures could consist of arbitrary expropriations, evictions, expulsions as well as the arbitrary redrawing of administrative borders and census manipulation.

INDEPENDENT NATIONAL INSTITUTIONS

- 16) Human rights acquire real meaning for their intended beneficiaries when the public authorities of the State establish mechanisms to ensure that the rights guaranteed in international conventions and declarations, or in domestic legislation, are effectively implemented and protected. As a complement to judicial procedures, independent national institutions usually provide quicker and less expensive recourses and are as such more accessible.

Discrimination as referred to in the **Convention on the Elimination of Racial Discrimination** is not defined according to criteria relating strictly to race. Article 1(1) of the **Convention** stipulates that the concept of racial discrimination shall mean "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Article 6 of the **Convention** declares that "State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention [...]" In this context, the establishment by States of independent national institutions that can act as mechanisms of redress and compensation, such as the institution of ombudsperson or a human rights commission is a measure of a given State's democratic and pluralistic nature. Accordingly, and with reference to **United Nations resolution 48/134 of 20 December 1993**, the Council of Europe has encouraged, in **Committee of Ministers Recommendation No. R(97)14 of 30 September 1997**, the establishment of "national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions." Such mechanisms of redress should be made available also to persons belonging to national minorities who consider that their linguistic and other rights have been violated.

JUDICIAL AUTHORITIES

- 17/18) International law requires public authorities to ensure that all persons who are arrested, accused and tried be informed of the charges against them and of all other proceedings in a language they understand. If need be, an interpreter must be made available to them free of charge. This standard of due process of law is universal in its application and does not relate to the linguistic rights of national minorities as such. Rather, the underlying principles are those of equality and non-discrimination before the law. Respect for these principles is particularly vital in relation to criminal charges and proceedings. As a consequence, Article 14(3)(a) of the **International Covenant on Civil and Political Rights** requires that everyone charged with a criminal offense shall "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". Article 6(3)(a) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates the same requirement in almost identical language. In addition, Article 5(2) of the aforementioned convention stipulates the same requirement in relation to arrest. Furthermore, Article 14(3) of the **International Covenant on Civil and Political Rights** stipulates the entitlement of everyone "in full equality" [...] "(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". In this connection, Article 14(3)(f) of the **International Covenant on Civil and Political Rights** and Article 6(3)(e) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of everyone "to have the free assistance of an interpreter if he cannot understand or speak the language used in court." While these guarantees concerning expressly the use of language are prescribed specifically in relation to criminal procedures, it follows from the fundamental guarantee of equality before courts and tribunals, as stipulated in the first sentence of Article 14(1) of the **International Covenant on Civil and Political Rights**, that legal proceedings of all kinds are to be considered more perfectly fair to the extent that the conditions are more strictly equal. This determination, which applies equally with respect to the choice of language for proceedings as a

whole, should guide States in the development of their policies concerning the equal and effective administration of justice.

More generally, Article 7(1) of the **European Charter for Regional or Minority Languages** declares that States shall base their policies, legislation and practice on such objectives and principles as "the recognition of the regional or minority languages as an expression of cultural wealth [...]" and "the need for resolute action to promote regional or minority languages in order to safeguard them". Article 7(4) of the **European Charter** stipulates that "in determining their policy with regard to regional and minority languages, [...] Parties shall take into consideration the needs and wishes expressed by the groups which use such languages." Moreover, Article 15 of the **Framework Convention** engages States to "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." If one considers the above-mentioned standards while taking into consideration the importance, in democratic societies, of effective access to justice, it is reasonable to expect that States should, so far as possible, ensure the right of persons belonging to national minorities to express themselves in their language in all stages of judicial proceedings (whether criminal, civil or administrative) while respecting the rights of others and maintaining the integrity of the processes, including through instances of appeal.

- 19) Insofar as access to justice is vital to the enjoyment of human rights, the degree to which one may participate directly and easily in available procedures is an important measure of such access. The availability of judicial procedures functioning in the language(s) of persons belonging to national minorities, therefore, renders access to justice more direct and easy for such persons.

On this basis, Article 9 of the **European Charter for Regional or Minority Languages** provides that, to the extent feasible and pursuant to the request of one of the affected parties, all judicial proceedings should be conducted in the regional or minority language. The Parliamentary Assembly of the Council of Europe, has come to the

same conclusion in Article 7(3) of its **Recommendation 1201** which provides that "In regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities." Accordingly, States should adopt appropriate recruitment and training policies for the judiciary.

DEPRIVATION OF LIBERTY

- 20) Rule 51, paragraphs 1 and 2, of the **United Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Rule 60, paragraphs 1 and 2 of the **European Prison Rules of the Council of Europe** stress the importance of the right of the incarcerated to be understood by the prison administration as well as the importance for the prison administration to be understood by the inmate population. These provisions do not relate to minority rights as such. However, taken into consideration along with the expressed desire of affected populations, their numerical strength and the principle of equality and non-discrimination, the aforementioned provisions are even more compelling in regions or localities where persons belonging to national minorities are present in significant numbers.
- 21) Rule 37 of the **United Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Article 43(1) of the **European Prison Rules of the Council of Europe** uphold the right of prisoners to communicate with their families, reputable friends and persons or representatives of outside organisations. In view of the importance of such human rights as freedom of expression and the right to use one's language in public and in private, it is incumbent upon authorities to respect these rights within the limitations prescribed by law even in penitentiary institutions. As a rule, prisoners should be able to communicate in their own language both orally with other inmates and with visitors and also in personal correspondence. Nevertheless, certain human rights and freedoms of persons detained for criminal acts may legitimately be restricted or suspended for reasons of public security in

February 1998

conformity with the limitations prescribed by the international instruments. As a practical matter, enjoyment of the linguistic rights of detained persons may be best facilitated by their detention in a place where their language is usually spoken.

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