

THE HAGUE RECOMMENDATIONS REGARDING THE EDUCATION RIGHTS OF NATIONAL MINORITIES & EXPLANATORY NOTE

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 Stoel 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, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel 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 over a dozen States, including Albania, Croatia, Estonia, Hungary, Kazakstan, 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 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 almost four 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. Minority education, in particular minority language education, is a high priority among these since, as the HCNM has recently stated, "It is clear that education is an extremely important element for the preservation and the deepening of the identity of persons belonging to a national minority." With this in mind, the HCNM requested, in the autumn of 1995, the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognized experts with a view to receiving their rec-

ommendations on an appropriate and coherent application of minority education rights in the OSCE region.

The Foundation on Inter-Ethnic Relations _ a non-governmental organization established in 1993 to carry out specialized activities in support of the HCNM _ facilitated a series of consultations of experts from various pertinent disciplines, including two meetings in The Hague. Among the experts consulted were, on the one hand, jurists specializing on international law and, on the other hand, linguists and educationalists specializing on the situations and needs of minorities. Specifically the experts were: A.G. Boyd Robertson, Senior Lecturer in Gaelic, University of Strathclyde (United Kingdom); Dr. Pieter van Dijk, Member of the State Council (the Netherlands); Dr. Asbjørn Eide, Director of the Norwegian Institute of Human Rights (Norway); Professor Rein Müllerson, Chair of International Law, King's College (United Kingdom); Professor Allan Rosas, Åbo Akademi University (Finland); Dr. Tove Skutnabb-Kangas, Associate Professor, Department of Languages and Culture, Roskilde University (Denmark); Professor György Szépe, Department of Language Sciences, University Janus Pannonius (Hungary); Professor Patrick Thornberry, Department of Law, Keele University (United Kingdom); Mr. Jenne van der Velde, Senior Curriculum Adviser, National Institute for Curriculum Development (the Netherlands).

In so far as existing standards of minority rights are part of human rights, the starting point of the consultations was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. 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.

The resultant Recommendations Regarding the Education Rights of National Minorities attempt to clarify in relatively straight-forward language the content of minority education 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 eight sub-headings which respond to the educational 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.

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The spirit of international instruments

- 1) The right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process. At the same time, 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.
- 2) In applying international instruments which may benefit persons belonging to national minorities, States should consistently adhere to the fundamental principles of equality and non-discrimination.

3) It should be borne in mind that the relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.

Measures and resources

4) States should approach minority education rights in a proactive manner. Where required, special measures should be adopted by States to actively implement minority language education rights to the maximum of their available resources, individually and through international assistance and cooperation, especially economic and technical.

Decentralization and participation

5) States should create conditions enabling institutions which are representative of members of the national minorities in question to participate, in a meaningful way, in the development and implementation of policies and programmes related to minority education.

6) States should endow regional and local authorities with appropriate competences concerning minority education thereby also facilitating the participation of minorities in the process of policy formulation at a regional and/or local level.

7) States should adopt measures to encourage parental involvement and choice in the educational system at a local level, including in the field of minority language education.

Public and private institutions

8) In accordance with international law, persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions in conformity with domestic law. These institutions may include schools teaching in the minority language.

9) Given the right of persons belonging to national minorities to establish and manage their own educational institutions, States may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions.

10) Private minority language educational institutions are entitled to seek their own sources of funding without any hindrance or discrimination from the State budget, international sources and the private sector.

Minority education at primary and secondary levels

11) The first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

12) Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Towards the end

of this period, a few practical or non-theoretical subjects should be taught through the medium of the State language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

13) In secondary school, a substantial part of the curriculum should be taught through the medium of the minority language. The minority language should be taught as a subject on a regular basis. The State language should also be taught as a subject on a regular basis, preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Throughout this period, the number of subjects taught in the State language, should gradually be increased. Research findings suggest that the more gradual the increase, the better for the child.

14) The maintenance of the primary and secondary levels of minority language education depends a great deal on the availability of teachers trained in all disciplines in the mother tongue. Therefore, ensuing from their obligation to provide adequate opportunities for minority language education, States should provide adequate facilities for the appropriate training of teachers and should facilitate access to such training.

Minority education in vocational schools

15) Vocational training in the minority language should be made accessible in specific subjects when persons belonging to the national minority in question have expressed a desire for it, when they have demonstrated the need for it and when their numerical strength justifies it.

16) The curriculum of vocational schools providing training in the mother tongue should be devised in a way which ensures that, upon completion of these programmes, students are able to practice their occupation both in the minority and the State language.

Minority education at tertiary level

17) Persons belonging to national minorities should have access to tertiary education in their own language when they have demonstrated the need for it and when their numerical strength justifies it. Minority language tertiary education can legitimately be made available to national minorities by establishing the required facilities within existing educational structures provided these can adequately serve the needs of the national minority in question. Persons belonging to national minorities may also seek ways and means to establish their own educational institutions at the tertiary level.

18) In situations where a national minority has, in recent history, maintained and controlled its own institutions of higher learning, this fact should be recognised in determining future patterns of provision.

Curriculum development

19) In view of the importance and value that international instruments attach to intercultural education and the highlighting of minority histories, cultures and traditions, State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities. Encouraging members of the majority to learn the languages of the national minorities living within the State would contribute to the strengthening of tolerance and multiculturalism within the State.

20) The curriculum content related to minorities should be developed with the active participation of bodies representative of the minorities in question.

21) States should facilitate the establishment of centres for minority language education curriculum development and assessment. These centres could be linked to existing institutions providing these can adequately facilitate the achievement of the curriculum related objectives.

EXPLANATORY NOTE TO THE HAGUE RECOMMENDATIONS REGARDING THE EDUCATION RIGHTS OF NATIONAL MINORITIES

General introduction

The Universal Declaration of Human Rights of 1948 broke new ground in that it was the first international instrument to declare education to be a human right.

Article 26 of the Declaration refers to elementary education as compulsory. It engages States to make technical and professional education generally available and higher education accessible on the basis of merit. It also makes clear that the objective of education should be the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Article 26 goes on to say that education shall promote understanding, tolerance and friendship among nations, racial or religious groups and contribute to the maintenance of peace. It also makes clear that parents have a prior right to choose the kind of education that shall be given to their children. The provisions of article 26 are reiterated with greater strength in the context of treaty law and in greater detail in article 13 of the International Covenant on Economic, Social and Cultural Rights.

Article 26 sets the tone of openness and inclusiveness for the subsequent international instruments which have emerged over time and have confirmed and further elaborated the right to education both generally and with reference to minorities specifically.

n Article 27 of the International Covenant on Civil and Political Rights.
n Article 30 of the Convention on the Rights of the Child.

The above mentioned articles guarantee the right of minorities to use their language in community with other members of their group. The articles below, for their part, provide guarantees relating to the possibility for national minorities of learning their mother tongue or learning in their mother tongue.

n Article 5 of the UNESCO Convention Against Discrimination in Education.
n Paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.
n Article 4 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
n Article 14 of the Framework Convention for the Protection of National Minorities.

To varying degrees, all of these instruments declare the right of minorities to maintain their collective identity through the medium of their mother tongue. This right is exercised, above all, through educa-

tion. These same instruments, however, underline that the right to maintain the collective identity through the minority language must be balanced by the responsibility to integrate and participate in the wider national society. Such integration requires the acquisition of a sound knowledge of both that society and the State language(s). The promotion of tolerance and pluralism is also an important component of this dynamic.

The international human rights instruments that make reference to minority language education remain somewhat vague and general. They make no specific reference to degrees of access nor do they stipulate which levels of mother tongue education should be made available to minorities and by what means. Such concepts as "adequate opportunities" to be taught in the minority language or to receive instruction in this language, as outlined in article 14 of the Council of Europe's Framework Convention for the Protection of National Minorities, should be considered in the light of other elements. These include the necessity of beneficial conditions facilitating the preservation, maintenance and development of language and culture as outlined in article 5 of the same Convention or the requirement to take the necessary measures to protect the ethnic, cultural, linguistic and religious identity of national minorities as stipulated in paragraph 33 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

Irrespective of the level of access which may be afforded by States, it should not be established in an arbitrary fashion. States are required to give due consideration to the needs of national minorities as these are consistently expressed and demonstrated by the communities in question.

For their part, national minorities should ensure that their demands are reasonable. They should give due consideration to such legitimate factors as their own numerical strength, their demographic density in any given region (or regions), as well as their capacity to contribute to the durability of these services and facilities over time.

The spirit of international instruments

Over the years there has been an evolution in the manner in which the rights of minorities have been formulated in international standards. Such passive formulae as "...persons belonging to minorities shall not be denied the right..." as expressed in the International Covenant on Civil and Political Rights (1966) have given way to a more positive, proactive approach such as "...States will protect the ethnic, cultural, linguistic and religious identity of national minorities..." as contained in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990). This progressive change of approach would indicate that a restrictive or minimalistic interpretation of the instruments is not in line with the spirit in which they have been formulated.

In addition, the level of access must be established in conformity with the underlying principles of equality and non-discrimination as these are formulated in articles 1 of The Charter of the United Nations and in article 2 of The Universal Declaration of Human Rights and as reiterated in most international instruments. Consideration must also be given to the conditions specific to each State.

Measures and resources

OSCE States are encouraged to approach the issue of minority rights in a proactive manner, i.e. in the spirit of article 31 of the Copenhagen Document which encourages them to adopt special measures to ensure full equality for members of national minorities. In this same sense, article 33 of the Copenha-

gen Document requires States to protect the ethnic, cultural, linguistic and religious identity of national minorities living in their territory and to create conditions for the promotion of that identity.

In some cases OSCE States are faced with serious fiscal limitations which could legitimately hamper their capacity to implement education policies and programmes for the benefit of national minorities. Although some rights must be implemented immediately States should strive to achieve, progressively, the full realization of minority language education rights to the maximum of their available resources, including through international assistance and cooperation in the spirit of article 2 of the International Covenant on Economic, Social and Cultural Rights.

Decentralization and participation

Article 15 of the Framework Convention for the Protection of National Minorities, paragraph 30 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and article 3 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities all underline the necessity for national minorities to participate in the decision-making process, especially in cases when the issues being considered affect them directly.

Effective participation in the decision-making process, especially as it affects minorities, is an essential component of the democratic process.

The active involvement of parents at local and regional levels, as well as the effective participation of institutions representing national minorities in the educational process (including the process of curriculum development as it relates to minorities), should be facilitated by States in the spirit of paragraph 35 of the Copenhagen Document which stresses the importance of effective participation of members of national minorities in public affairs including in the affairs relating to the protection and promotion of their own identity.

Public and private institutions

Article 27 of the International Covenant on Civil and Political Rights refers to the right of minorities to use their language in community with other members of their group. Article 13 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of parents to choose for their children schools other than those established by public authorities. It also guarantees the right of individuals and bodies to establish and manage alternative educational institutions as long as these conform to minimum educational standards as laid down by the State. Article 13 of the Framework Convention for the Protection of National Minorities refers to the right of minorities to establish and manage their own educational institutions, although the State has no obligation to fund these institutions. Paragraph 32 of the Copenhagen Document imposes no obligation on the State to fund these institutions, but it does stipulate that these institutions may "seek public assistance from the State in conformity with national legislation".

The right of national minorities to establish and manage their own institutions, including educational ones, is well grounded in international law and must be recognized as such. Although the State has the right to oversee this process from an administrative perspective and in conformity with its own legislation, it must not prevent the enjoyment of this right by imposing unreasonable administrative requirements which might render it practically impossible for national minorities to establish their own educational institutions.

Although there is no formal obligation for States to fund these private establishments, these institutions should not be prevented from seeking resources from all domestic and international sources.

Minority education at primary and secondary levels

International instruments relating to minority language education declare that minorities not only have the right to maintain their identity through the medium of their mother tongue but that they also have the right to integrate into and participate in the wider national society by learning the State language.

In view of the above, the attainment of multilingualism by the national minorities of OSCE States can be seen as a most effective way of meeting the objectives of the international instruments relating to the protection of national minorities as well as to their integration. The recommendations relating to primary and secondary schooling are meant to serve as a guide in the development of minority language education policy and in the provision of related programmes.

The approach proposed is suggested by educational research and constitutes a realistic interpretation of relevant international norms.

The effectiveness of this approach depends on a number of factors. First there is the extent to which this approach strengthens the weaker minority mother tongue by using it as the medium for teaching. Another factor is the extent to which bilingual teachers are involved in the entire process.

Yet another factor to be considered is the extent to which both the minority and the State language are taught as subjects throughout the 12 years of schooling and finally the extent to which both languages are used as a medium of education in an optimal way in different phases of the child's education.

This approach strives to create the space that is required for the weaker minority language to thrive. It is in marked contrast with other approaches whose objective is to teach the minority language or even to carry out minimum instruction in the minority language only with a view to facilitating an early transition to teaching exclusively in the State language.

Submersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely integrated into classes with children of the majority are not in line with international standards. Likewise, this applies to segregated schools in which the entire curriculum is taught exclusively through the medium of the minority mother tongue, throughout the entire educational process and where the majority language is not taught at all or only to a minimal extent.

Minority education in vocational schools

The right of persons belonging to national minorities to learn their mother tongue or to receive instruction in their mother tongue as formulated in paragraph 34 of the Copenhagen Document should imply the right to vocational training in the mother tongue in specific subjects. In the spirit of equality and non-discrimination, OSCE States should ensure access to such training where the desire for it is made evident and the numbers justify it.

On the other hand, the capacity of the State to plan and control its economic and educational policies should not be diminished. The ability of graduates of minority language vocational training schools

also to function professionally in the State language, would be an advantage. It would enable them to work both in the region in which the minority in question is concentrated as well as anywhere else in the State. At a time of transition to the market economy which presupposes the unfettered movement of goods, services and labour, such a limitation can make it difficult for the State to facilitate opportunities for employment and overall economic development. Therefore, vocational training in the mother tongue of national minorities should ensure that the students concerned also acquire appropriate training in the State language(s).

Minority education at tertiary education

As in the previous case, the right to learn their mother tongue or to receive instruction in the mother tongue as formulated in paragraph 34 of the Copenhagen Document could infer the right of national minorities to tertiary education in their mother tongue. In this case again the principles of equal access and non-discrimination must be taken into consideration, as well as the needs of the community and the usual numerical justification. In the absence of government funding, the freedom of minorities to establish their own institutions of higher learning should not be restricted.

Paragraph 33 of the Copenhagen Document stresses the importance of the State not only protecting the identity of minorities but promoting it as well. In view of the above, States should consider the possibility of making tertiary education in the minority language available where the need has been demonstrated and the numerical strength of the minority justifies it. In this context tertiary education in the mother tongue should not be restricted to teacher training.

This having been established, the fiscal limitations faced particularly by States in transition to market economies must be taken into consideration. The provision of tertiary education in the minority language is not synonymous with the establishment of parallel infrastructures. Moreover the entrenchment of parallel educational institutions at university level could contribute to the isolation of the minority from the majority. Article 26 of the Universal Declaration of Human Rights stresses that the objective of education is the promotion of understanding, tolerance and friendship among nations, racial and religious groups. In this spirit, and with integration in mind, the intellectual and cultural development of majorities and minorities should not take place in isolation.

Curriculum development

Since the end of the Second World War an ever growing number of international instruments have placed increasing emphasis on the objectives of education. According to these instruments education is required not only to provide strictly academic or technical training but it is also required to inculcate such values as tolerance, pluralism, anti-racism and international and inter-communal harmony. Such requirements evidently put a special onus on States that have national minorities within their borders. In these States, the issue of inter-group\inter-ethnic cohabitation and harmony is also of vital importance to their internal stability. Such cohabitation and harmony is also an important factor in the preservation of regional peace and security.

Article 4 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to "encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory". Article 12 of the Framework Convention for the Protection of National Minorities requires States to "foster knowledge of the culture, history, language and religion of their national minorities".

Paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE refers to the requirement that, in the school curriculum, States "will also take account of the history and culture of national minorities".

These requirements make it incumbent upon States to make room in the school curriculum for the teaching of the history and traditions of the various national minorities living within their borders. This can be achieved in a unilateral manner by the State authorities without due regard to the participation of the minorities in question. Such an approach, however, is not advisable and could be detrimental.

Article 15 of the Framework Convention for the Protection of National Minorities, paragraph 30 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and article 3 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities all underline the necessity for national minorities to participate in the decision-making process especially in cases when the issues being considered affect them directly.

The emergence of centres for minority language educational curriculum development would therefore facilitate this dual process and ensure its quality and professionalism.

Final remarks

The subject of minority education rights is a sensitive issue in a number of participating States of the OSCE. At the same time the educational process has the potential to effectively facilitate and strengthen mutual respect and understanding between the various communities within participating States.

In view of the delicate nature of this issue at the present time, and in view of the somewhat vague and general nature of the standards contained in the various international human rights instruments, the elaboration of a series of recommendations may contribute to creating a better understanding of, and approach to issues of minority education rights. The Hague Recommendations are not intended to be comprehensive. They are meant to serve as a general framework which can assist States in the process of minority education policy development.