



Organization for Security and Co-operation in Europe

**Building a Solid Foundation:
Minority Rights and Their Implementation**

by

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Excellencies, Ladies and Gentlemen:

Permit me to begin by expressing my appreciation for the invitation to take part in this conference. My compliments to the Serb National Council in co-operation with the Friedrich Naumann Foundation and the Croatian Law Centre for organizing this timely meeting. There should be no doubt that the international protection of minorities must have a high priority in today's Europe, and so I am glad to see the Government of Croatia pursuing its important and constructive initiative of elaborating a Constitutional Law on National Minorities. These efforts deserve wide support both within Croatia and among the international community.

I know that this meeting will go into specifics about aspects of legislation concerning the protection of persons belonging to national minorities, particularly the draft Constitutional Law on National Minorities. I will touch upon the draft Law in a moment, but I would like to focus first on the basic standards of international law pertaining to the protection of persons belonging to national minorities.

International standards map out the framework in which political compromises can be made. They constitute the minimum level of acceptable behaviour concerning specific individuals or, rather, individuals in a specific situation.

I stress *individuals* rather than groups because as yet there are few group rights agreed at international level, and even these must, in the end, be enjoyed by individuals acting in community. That is why in the OSCE we always refer to *persons* belonging to national minorities as opposed to national minorities *per se*. This is not to deny the existence of groups. Indeed, in my function, because I do not consider individual cases, I am always looking at the situation of particular groups – usually those in a numerically inferior position; in other words minorities.

Minority rights are an integral part of human rights. Indeed, until recently the conventional wisdom was that particular concerns and interests of persons belonging

to minorities could be served merely through the general regime of human rights as articulated, for example, in the Universal Declaration of Human Rights. Certainly, universal human rights go a long way to protecting persons belonging to minorities, in particular through the principles of equality and non-discrimination. If basic human rights are respected in a democratic political framework based on the rule of law, then all persons, regardless of ethnicity, language or religion, will have the equal right and effective opportunity freely to express and pursue their legitimate interests and aspirations.

However, in quite a number of cases, additional rights are clearly necessary. These rights act as a safety net in cases when minorities are vulnerable to majority decisions that affect their interests, concerns and desires. These rights do not privilege persons belonging to minorities, but act to ensure equal respect for their dignity, in particular their identity. They serve to bring all members of society to at least a minimum level of equality in the exercise and enjoyment of human rights and fundamental freedoms.

In the past few years important standards have been developed to set clearer guidelines for the protection of the rights of persons belonging to national minorities. I am thinking in particular of the OSCE's 1990 Copenhagen Document and the Council of Europe's 1994 Framework Convention for the Protection of National Minorities.

Of course, it is necessary to put these norms into practice. States are showing a greater understanding for the need to develop legislation to protect minority rights, to devise mechanisms to facilitate dialogue with minorities, and to build frameworks in which minorities can more fully participate in decisions and activities that directly affect them. This is increasingly the case for States in post-Communist transition, including Croatia.

In fact, as some of you know, I have been following closely the developments in the revision and implementation of constitutional guarantees of minority rights in this country and I consider the new draft Law as constituting an important step in the protection of national minorities in Croatia. It provides a comprehensive framework for further legislative and regulatory action aimed at the protection of minorities. To this end, I hope the draft Law will be adopted by Parliament in the near future.

Overall, I believe it is important to move from formal guarantees of representation to arrangements which ensure effective participation. The legislative framework is important, but equally important is the spirit of reception among the wider society. Croatia as a whole should embrace its full diversity, which means first of all to recognize that diversity in both governmental and popular terms, and then to respect differences by accommodating them in law and practice.

This is important for implementation of the Law once adopted. As a matter of effective implementation inspiring public confidence, the scope of application of the Law should not be unnecessarily limited. In this respect I wish to point out that internationally protected human rights are universal, also in the sense that they must be guaranteed to everyone within the jurisdiction of the State and without discrimination – indeed, sometimes without any distinction. Minority rights are an integral part of human rights and as such are to be enjoyed by *everyone* – meaning every person within the jurisdiction of the State. It is precisely this idea which lies at the origin of international human rights law, including protection of minorities – the idea that protection is afforded to all persons and not just citizens of the State.

Certainly, many of the rights which are secured for persons belonging to minorities are rights to which they are entitled under general human rights law. This applies, for example, to freedom of expression, freedom of association and assembly, freedom of religion, freedom to establish and maintain private schools and so on. However, there are some important exceptions, which are specifically identified in the human rights treaties, such as rights of political participation, for which the State may

(and often does) limit application only to citizens. But, there seems no convincing reason why other minority rights should be limited to citizens only. This is also the view of independent experts I have consulted who point out that, for example, other international law obligations (such as those relating to refugees) compel the State to respond also and equally to the cultural needs of non-citizens. Accordingly, I suggest to drop the requirement of citizenship in the definition so far included in the draft Law.

Of course, the law itself is not a sufficient test of compliance with international obligations. What matters is action actually taken in pursuance of the law. This ultimately leads to an assessment of the real opportunities available within the State to persons belonging to minorities. Domestic law should give effect to the international norms and standards. Very detailed legal arrangements may be useful in some cases, while frameworks may be sufficient in other cases. All such arrangements should result from open and inclusive processes. Once the arrangements are in place, stability is required to assure some security for those affected, especially persons belonging to national minorities. This raises the issue of legal entrenchment which aims to protect such important legislation from easy changes by subsequent parliaments and governments according to popular moods.

The essence of participation is involvement, both in terms of the opportunity to make substantive contributions to decision-making processes and in terms of the effect of those contributions. The notion of good governance includes the premise that simple majoritarian decision-making is not always sufficient and specific measures are necessary to ensure that minorities can affect decision-making processes. This might be done through guaranteed representation in decision-making bodies, for example through reserved seats, by way of quotas, etc. I was pleased to see, in this context, that the new draft Law provides for a plural vote system. The members of national minorities shall have, along with the general and equal right to vote for members of the Croatian parliament, the right to elect a certain number of minority representatives in accordance with a special law.

While the electoral system may ensure minority representation in the legislature, there remains no guarantee that the minorities represented in the legislature will be accorded any material role in the parliament or in government structures. Representation is often not enough. It needs to be supported by other measures. For example, in Parliament the minority may be accorded key seats in parliamentary committees that concern the interests of national minorities or special procedures may be established to deal with minority vetoes in respect of minority issues. In government structures, the proportional allocation of civil service positions may be a mechanism that may be considered to give real meaning to minority participation in public life. These kinds of supporting measures all contribute to turning what would otherwise be a formal minority of seats in the Parliament into the meaningful participation of a national minority in public life.

These steps must be taken first of all in and for the interests of Croatia – to build a more inclusive, stronger democracy. It will also contribute to regional peace and stability, on the basis of which prosperity may be achieved. To these ends, it is worth recalling that respect for human rights, including minority rights, is part of the European Union's criteria for admission of new Members.

But we still have some way to go. To assist States in understanding and applying international standards concerning national minorities I have commissioned international experts to come up with general recommendations regarding the education rights of national minorities, the linguistic rights of national minorities and the effective participation of minorities in public life. These are issues which I often encounter in my work. Focusing on the particular needs of minorities, these recommendations (which are known, respectively, as *The Hague*, *Oslo* and *Lund Recommendations*) are designed to help governments create conditions to allow for the full and free development of the individual human personality in conditions of equality. For those who are interested, I have brought with me some copies of these Recommendations, including some in the Croatian language. The essence of minority

rights and these Recommendations is to achieve integrated societies composed of equal members all of whom are able to achieve their full development.

In order to be representative of and responsive to existing plurality of interests and aspirations, democratic government and administration require structures and modes of societal interaction that satisfy the needs of all members of society. Since very few populations are ethnically homogeneous, it is almost inevitable that every State will have at least one minority. Depending on the size of the minority or minorities, this can affect questions like use of language, education, culture and participation in government. Fair and practical standards to protect minorities are therefore essential.

Experience has taught me that we can not look at standards in terms of pure law. One must be sensitive to the context in which one is working in order that the affected persons will see the logic and possibility of internalizing and applying the established norms. The key is to move from the abstract to the concrete, to get States to take measures – legal and political – to create the types of conditions foreseen in the standards concerning minorities. My office has developed considerable experience in this field.

In this connection, it is necessary to underline that all rights are important. In this country, particular attention must be paid to the right to return to one's place of origin and home, both voluntarily and in conditions of safety. The primary responsibility for this, as for all human rights, lies with the State of origin to create and ensure conditions of return. The right of return is obviously prior in importance to assurances for respect of human rights upon return. And it seems equally obvious that the right of return has a bearing on regional peace and security since the prolonged displacement of large numbers of persons can be destabilizing. This unresolved matter, therefore, requires the full and immediate attention of the authorities. Then, upon return, respect for all other human rights, including minority rights, must be ensured.

The point of such initiatives should be the effective participation of minorities in public life. By this I mean that States should not only protect minority rights, but they should also establish specific arrangements for national minorities. Such arrangements enable minorities to maintain their own identity and characteristics while including them in the overall life of the State. This can promote good governance and maintain the integrity of the State as all persons find security and opportunity within the existing framework.

In its most basic form, this means the creation of a level playing field. This involves combating discrimination and racism, reducing socio-economic cleavages and lowering real and psychological barriers between groups. It also means recognizing, protecting and promoting the identity of minorities, creating possibilities for dialogue, effective participation in decision-making processes, and being responsive to the linguistic, educational and cultural needs of minorities. For example, States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. This also applies to regional and local levels of government. The electoral system should facilitate minority representation and influence. States should also establish advisory or consultative bodies with appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and minorities. Of course, I am aware of important efforts in Croatia to achieve these ends.

A second option which may be appropriate in certain situations is to decentralize power to regions or the local level in order to improve the opportunities for territorially concentrated minorities to exercise authority over matters that affect them. In this way the State maintains sovereignty, while devolving some of its powers to an internal unit that gains considerable control over its own destiny without being sovereign. Of course, important powers of central control hold such a system together, in particular in guaranteeing the rule of law.

I would like to conclude by noting that there are now a number of international standards concerning the protection of persons belonging to national minorities. There are also institutions, like my Office, to assist States in implementing those standards and bodies like the Council of Europe to monitor compliance. What still needs to be done is to achieve a paradigm shift in the way that people look at the State. National law should be designed to protect equally the rights of all inhabitants of the State, not only the so-called “State forming” nation. International law should provide the overall framework and impulse for such a pluralistic vision and have mechanisms to protect those who would fall through the cracks. Finally, such a shift in thinking would enable people to feel and live together in a common venture with a common future.

The greatest challenge is to make international standards relevant in people’s everyday lives. I have witnessed too many situations where the rule of law is weak or even non-existent. In such cases, individuals or groups take matters into their own hands. I have also witnessed too many situations where law is abused and twisted by central and local officials. This makes people skeptical about the rule of law and makes them feel that they live in an unjust society. This can have divisive consequences. Let us therefore not lose sight of the reasons why international standards are devised in the first place. And let us continue to ensure that the process of devising legal frameworks keeps up to date with the challenges of our time. We should also continue to look for ways to assist States to apply the norms to which they subscribe. This will not only prevent conflict, but should encourage the development of fair and civil societies. Adoption of the new draft Croatian Constitutional Law on the Rights of National Minorities fits within this framework and can serve to breath life into these ideas through its inclusive message, approach and provisions, including

mechanisms of effective implementation. As such, it offers a solid foundation on which to build a fully democratic Croatia in which a dedicated follow-up may ensure equality in fact for persons belonging to national minorities in Croatia.

Thank you for your attention.