Organization for Security and Co-operation in Europe

Minority Rights, Participation and Bilateral Agreements

Address to an international seminar on
Legal Aspects of Minority Rights: Participation in Decision-Making Processes
and Bilateral Agreements on Minority Rights

by

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Distinguished Colleagues,
Ladies and Gentlemen,

Thank you for the invitation to address this seminar.

I would like to say a few words about the three main themes of this seminar, namely legal aspects of minority rights, the participation of minorities in decision making processes and the role of bilateral agreements in protecting minority rights. It is, of course, self-evident that the protection of minorities is and will remain a central element of concern in the OSCE, especially South-Eastern Europe. We must meet this concern with vigilance, including careful commitment to existing standards.

I

To start with, I would like to stress the importance of international human rights standards for protecting the rights of persons belonging to national minorities. All rights are important. I would like to draw particular attention to the fact that the right of return to one's place of origin and home, both voluntarily and in conditions of safety, is of fundamental importance. The primary responsibility lies with the state of origin to create and ensure conditions of return. The right of return also has a bearing on regional peace and security since the prolonged displacement of large numbers of persons can be destabilizing. Of course, conditions of return also imply respect for all other human rights in order to integrate societies and avoid the recurrence of displacement. If all 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 opportunity to freely express and pursue their legitimate interests and aspirations. We must stick to these standards – indeed insist on them – and not allow obligations and commitments to be interpreted in a restrictive manner.

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, for example the Universal Declaration of Human Rights and the two United Nations Covenants.

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 all 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 Framework Convention for the Protection of National Minorities of 1994.

Of course, it is necessary to put these standards into practice. Some states are showing a greater understanding for the need to develop legislation to protect minority rights, devise mechanisms to facilitate dialogue with minorities, and 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. For eight years I have encouraged governments to take measures – legal and political – to create the types of conditions foreseen in standards concerning minorities. You may be interested to know that I have recently been invited by the new Government of the Federal Republic of Yugoslavia to visit the republic and discuss minority issues in what is one of Europe's most multi-ethnic societies

To assist States in understanding and applying international standards concerning national minorities I have also commissioned international experts to come up with general recommendations regarding the education rights of national minorities, the linguistic rights of national minorities and the right of minorities to effective participation 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 to create conditions to allow for the full and free development of the individual human personality in conditions of equality. (Copies of the recommendations are available at this seminar.)

After all, we live in a world of diversity. In order to be representative and responsive, 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, concentration and history 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. This is not only a question of meeting international standards, it is the basis of good governance in multi-ethnic societies.

II

There is no doubt that the effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Participation starts with dialogue and participation facilitates dialogue. Dialogue between the government and the minority is seldom limited to a single issue. It is therefore important to have adequate structures of dialogue between the government and minorities for the longer term. A number of countries in Central and Eastern Europe have established government departments for minority issues, and have appointed Ombudsmen or Commissioners on Ethnic and Human Rights Issues. Several have also established minority consultative or advisory councils, either connected to legislative bodies or free-standing. Experience shows that such consultative bodies are most effective if they offer meaningful opportunities for exchanges of view on concrete issues. Otherwise they will be regarded as useless 'talkshops'.

Through effective participation in decision-making processes and bodies, representatives of minorities have the possibility to present their views directly to the responsible authorities. This can help the authorities to understand minorities' concerns and take these into account when developing policies. At the same time, the authorities are offered a platform to explain their policies and intentions. This can contribute to a more co-operative and less confrontational situation.

This should not be seen as tokenism. Experience has shown that integration through participation is an important element in forging links of mutual understanding and loyalty between the majority and minority communities within the State, and in giving minorities

input to processes that directly affect them. It also improves overall governance. If minorities feel that they have a stake in society, if they have input into discussion and decision-making bodies, if they have avenues of appeal, and if they feel that their identities are being protected and promoted, the chances of inter-ethnic tensions arising will be significantly reduced.

This is what I often refer to as integrating diversity. Because most modern states are multi-cultural, we all have to learn to value and accommodate pluralism. The key is to strike a balance between majority and minority interests that allow for all persons to enjoy their individual identities while realizing and valuing shared interests.

Participation in decision-making should be at all levels of government. This could include: special arrangements for minority representation in the legislative process; mechanisms to ensure that minority interests are considered within relevant ministries; special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority. The electoral system should also facilitate minority representation and influence. These are some of the recommendations made by international experts in the so-called Lund Recommendations on the Effective Participation of National Minorities in Public Life. It should be stressed that these alternatives are not mutually exclusive nor hierarchical: for example, directly elected representation in legislative bodies is not the only, nor necessarily the most effective, means of ensuring that minority interests are taken into account in the decision-making process.

Not all arrangements should be limited to the level of central government. Local problems require local solutions, especially in regions where there is a substantial concentration of persons belonging to national minorities. It is my impression, based on experience and the wisdom of international experts, that self-administration or self-governance can allow minorities to have greater say and control over decisions that affect them.

When most people think of self-governance, they immediately think of self-determination and then secession. Territorial self-governance should not be equated with secession. It simply means the shifting or decentralization of certain functions and competences from the centre to regional, community or local level. In such arrangements, the central government usually exercises control over major matters of national interest, such as defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs, while the minority or territorial administration could assume primary or significant authority over education, culture, forms of public administration (including use of minority language), environment, local planning and so on. Shared functions could include such matters as taxation, administration of justice, tourism and transport.

The division of these competences is not hard and fast, nor are these types of arrangements applicable in all cases where there are significant minority communities. Furthermore, functions may be allocated asymetrically to respond to different minority situations within the same State.

There are non-territorial ways in which specific interests of national minorities may be assured. I admit that there are few examples of this in practice, but I am thinking here of what is sometimes called cultural autonomy. For example, individuals and groups have the right to choose their names in the minority languages and obtain official recognition of their names. Minority education institutions should play a role in determining the curricula for teaching of their minority languages and cultures. Minorities should be able to determine and

enjoy their own symbols and other forms of cultural expression. The point is to give minorities, especially those that are dispersed throughout a State, ways of maintaining and developing their identities and cultures. Of course, the bottom line is protecting their human rights.

I do not advocate autonomy as a panacea for minority problems, and I am opposed to secession as the solution to inter-ethnic tensions. Secession is usually based on the myth that the ethnically "pure" nation needs its own State. Attempts to carve mono-ethnic States out of multi-ethnic environments almost invariably leads to violent conflict, human rights abuses and illiberal forms of government.

Nevertheless, I raise the issue of self-government because I believe that there is a vastly unexplored range of possibilities between assimilation on the one hand and secession on the other that has yet to be fully appreciated in many countries of Europe. There are ways of finding a synthesis between the claims for self-determination on the one hand and the interest in preserving the territorial integrity of States on the other. In my opinion, a good place to start is to focus more attention on so-called "internal" self-determination whereby self-government is arranged in such a way as to respond to the desire by a significant minority group to have a considerable amount of control over its own administration. . . without challenging the sovereignty and integrity of the State. I therefore encourage you to reflect upon the ideas that are contained in the Lund Recommendations.

III

Let me turn to the third subject of this seminar, namely the effect that minority issues could have on bilateral relations between States. Such relations are often complicated when one's neighbor is a kin-State to a sizeable minority in one's State. Bilateral treaties can sometimes play a useful confidence-building role in such situations. I am thinking, for example, of the Treaty on Good-Neighborly Relations and Co-operation between the Federal Republic of Germany and the Republic of Poland or the bilateral treaties between Hungary and Slovakia, Croatia and Romania.

Of course, in the first place such treaties play a crucial role in establishing the basis of good neighborliness and friendly relations especially between geographically contiguous States which simply need a broad framework to regulate the full range of their common interests, including border controls, use of water resources, economic and justice affairs, and so on. Importantly, if such treaties also contain clauses concerning the protection of persons belonging to national minorities they can put to rest any concerns that neighbors may have about the treatment of a kin-minority. They may also ease suspicions about the use of minority issues as a pretext for external interference, and create mechanisms both to facilitate cultural exchanges of mutual interest and benefit, and also respond to points of dispute which may arise.

That being said, experience has shown that bilateral agreements including provisions on minority rights must include reciprocal elements. They can not be one-sided. They should be based on established international standards and must certainly not go below or compromise existing obligations or commitments. To this end, they should contain a clause to the effect that the contents should not be construed in ways that conflict with international law. In addition, bilateral treaties should avoid preferential treatment for certain minorities over other groups or individuals in society. They should also not necessarily be viewed as

static. Because new issues arise and relationships change, treaties should provide mechanisms for political consultations and/or joint commissions to follow-up on the provisions of the treaty in order to ensure that their spirit is being lived up to.

Bilateral treaties are also no substitute for good domestic policy and legislation, nor do they supersede other international standards. One must also be wary that provisions of such treaties are not used as tools to meddle in the internal politics of States. In this respect, bilateral treaties can not replace multilateral mechanisms which have the essential attributes of independence and impartiality. Indeed, exactly when disputes may arise, bilateral treaties may not be appropriate because of the evident and unavoidable self-interest of the parties. This is one lesson about bilateral treaties which I hope we have learned from history and surely do not wish to repeat.

That is not to say that the internal affairs of a State are out of bounds. It is worth recalling that in 1991 OSCE participating States agreed in Moscow that "commitments undertaken in the human dimension of the [O]SCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the affairs of the State concerned." This has allowed the OSCE, including my office, to be legitimately and constructively engaged in the internal affairs of sovereign States on the basis of our common interest in security. However, Chechnya and Kosovo have demonstrated that the normative system necessary to guide our conduct when confronting the violent repression of minorities is still in its infancy, and that existing mechanisms have their limits. Moreover, we have yet to develop sufficient techniques to secure routine compliance with the norms that are already in place. We must therefore clarify legitimate grounds for external involvement in such affairs of a State which not only have significant effects beyond the State, but which also constitute substantial violations of the fundamental norms to which we are all committed

These are the points that I wanted to make Mr. Chairman.

Thank you for your attention and I wish you all the best for this seminar.