

Conference

TEN YEARS OF PROTECTING NATIONAL MINORITIES AND REGIONAL OR MINORITY LANGUAGES

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Address on “Protection of National Minorities and Regional and Minority Languages in Europe: Where Do we Stand?”

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Ladies and Gentlemen,

Minorities in the past have often been regarded as a Pandora’s box, as the Deputy Secretary General said in her opening statement. With good reasons, the Council of Europe decided that one should open this box, in order to avoid that rising pressure of unresolved minority problems – like in a steam-boiler – finally leads to an explosion. Unfortunately we have been witnesses of such explosions during the last two decades – explosions that were caused by political mismanagement, but also by too rigid structures of unitarian statehood not taking due regard of the cultural and linguistic heterogeneity still subsisting in most states of Europe.

Fomalized protection of national minorities and of regional or minority languages should be seen in such perspective as a safeguard against escalating pressure of unresolved conflict. Minority protection thus is an issue of conflict prevention, of preserving peace and managing conflict. But this is not the only dimension of the protection of minorities – and of minority languages. There is also a human rights dimension – leading a decent life according to one’s own preferences, and being respected in one’s cultural and linguistic identity, constitutes a fundamental human right. This has been made clear by the European Court on Human Rights in its jurisprudence on ART.8 ECHR, and this is confirmed by the provisions of the Framework Convention on the Protection of National Minorities. Even the Charter stresses this human rights dimension by stating in its preamble “that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms”.

But there is also a third dimension which justifies efforts to protect minorities as well as minority languages – the need to preserve multilingualism as a historical legacy of Europe. As the Preamble of the Charter states: “Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe’s cultural wealth and traditions”. This objective is corroborated by the insistence in a later paragraph of the preamble upon “the value of interculturalism and multilingualism” as core values of Europe.

Why do we distinguish the protection of minorities and of minority languages? Ms. De Boer-Buquicchio has already pointed to the different historical backgrounds of the two conventions. The fact that the two instruments evolved from totally different strands of thinking explains to a certain degree also the very different focus of Framework Convention and Language Charter. The Framework Convention in its essence is a human rights instrument, taking up and consolidating the minority related rights that developed in the jurisprudence of the ECHR. The Language Charter, to the contrary, focuses by and large on the cultural dimension of the protection of minority languages, by concentrating upon the preservation of minority languages as an expression of the cultural legacy of multilingualism. The one convention seeks to protect primarily members of national minorities as human beings, while the other is focused upon the language as an embodiment of cultural heritage. But one should not exaggerate the difference between the two conventions. It is true, the Framework Convention formulates its guarantees as individual rights, whereas the Charter mainly works with objective standards. In its concretion, however, the objective standards of the Charter may lead to subjective rights as well – one might look only into some of the education provisions of Art.8 para.1 of the Charter. In this sense, the Charter bears also traits of a human rights instrument, notwithstanding the all too timid language avoiding any alliteration to individual rights of speakers and/or collective rights of language communities.

Due to the historical background of both instruments and its being concluded nearly at the same time while dealing in a parallel fashion with nearly the same problems, there are many similarities in substance between the Framework Convention and the Language Charter. Both instruments complement each other, although it is clear that the Framework Convention is much broader in scope, covering issues of non-discrimination and most fundamental rights, while the Charter lays down much more specific and demanding obligations than the Framework Convention for a very specific area of application, namely school education, use of minority languages in the media and their promotion in the cultural field. The ‘menu’ approach of the Charter here has its virtues, since it forces states to define very clearly what are its future standards for the protection of certain defined minority languages. If states strive to implement these undertakings, however, they often have to cope with serious problems. The gap between the instrument of ratification singling out the undertakings accepted for individual languages and the daily administrative practice in dealing with minority

languages will often be a point of concern. Not to misunderstand me: the fact that states ratify for ambitious menus going much beyond what is granted in daily routine is a positive phenomenon. Such normative ambition means that the instrument of ratification of the Charter usually contains political promises that will have to be delivered in the future. The normative ambitions still to be achieved in future become only a problem if states are not willing any more in later practice to deliver what they have promised earlier in their instrument of ratification.

To repeat again: Framework Convention and Language Charter are complementary instruments, constitute an inter-linked cluster of conventional instruments intended to protect and promote the cultural and linguistic identity of minority populations. The means and modalities to achieve this objective are different in both conventions – the objective as such remains more or less the same. Also the institutional set-ups resemble each other. Both conventions rely on reporting procedures administered by expert committees. The problems of information-gathering are nearly the same in both cases, as are the procedures of fact-finding and of drafting monitoring reports. There is only one significant difference: The reporting period in the case of the Charter is fixed at only three years, which creates certain problems for member states and the Committee of Experts. It is true, the number of member states is still much lower in the case of the Charter – but also the secretariat of the Charter is staffed with a much smaller number of personnel than in the case of all the other Council of Europe treaty bodies.

Does the short reporting period of three years create a real problem? The Committee of Experts does not think so. Just to the contrary, the relatively short interval has the advantage of creating a system of constant dialogue between the state concerned, the representatives of the speakers and the Committee of Experts. There is always one partner at any time dealing with issues of reporting. Any problem coming up in time can rather soon be dealt with in the next cycle. The price to be paid for this is clear – there is a danger of overburdening. The Committee of Experts is aware of these risks. It is currently reviewing its working methods, which might include a lightening of the reporting burden for every second report, focusing the reporting on certain priority matters, such as the matters of primary concern singled out in the set of recommendations adopted by the Committee of Ministers.

All in all, where do we stand? I think that the two conventions constitute a big success story of the Council of Europe. The major challenge of ethnic conflicts and of unresolved minority problems have been taken up by the Council of Europe and have been tackled sensibly in the two conventional instruments. As stressed above, the two conventions are complementary, were designed and have further developed in a productive division of labour. Whereas the Framework Convention concentrates on non-discrimination and the human rights of minority members, the Charter focuses on language issues (and by thus on issues of cultural and linguistic identity). Experience of the last ten years shows

that the efforts at standard-setting were by and large successful. We will not get better standards. What still needs to be done is an effective implementation of the standards laid down in both conventions. The treaty bodies established under the conventions do their best to strive for improvements in implementation. But these bodies need political support – from the Council of Europe’s secretariat, from the Committee of Ministers, from the member states. There is still a lot to be done. A huge series of problems in technical detail show up in every reporting procedure. The slate of ratification of the Charter is still not impressive, which means that there is a considerable number of states supporting rhetorically the goals of the Charter but reluctant to submit themselves to the stringent disciplines of the Charter. Improving the protection of minorities and the promotion of minority languages was declared to be a common objective of the member states of the Council of Europe – and this should be taken seriously. Time is running out. There are more and more small languages threatened by extinction, endangering the legacy of multilingualism, while at the same time European states prove to be more or less helpless towards the new challenge of increasing cultural heterogeneity and multilingualism in its urban core areas. There are a lot of lessons to be learnt – and they are laid down in instruments like the Framework Convention and the Language Charter.