Conference
TEN YEARS OF PROTECTING NATIONAL MINORITIES AND REGIONAL OR MINORITY LANGUAGES

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Mr Chairman,
Ladies and Gentlemen,

What else can be said after so many prominent speakers? Yet I am going to try – and even with a touch of criticism. If I am somewhere wrong, never mind. "Empty criticism is not so visible as empty praise", as my favourite classic Alexander Sergeyevich Pushkin has said.

Pushkin had a critical spirit, but he did not seek confrontation, he quested for harmony. Some of his literary gems were about minorities, or even about persons belonging to national minorities - if we use today´s and correct terminology. Pushkin himself was a descendant of an Abyssinian from Eritrea, or of a Cameroonian as the recent studies suggest, and he was proud of it. Some scholars consider him to be one of the so-called Black Europeans, together with Alexandre Dumas, Samuel Coleridge and some others whose work has been recognized to be an important part of Europe's cultural heritage. The Russian language he used and promoted cannot be considered a minority language, not even back in his times, but the truth is that the higher class to which Pushkin at least formally belonged deemed Russian an inferior language, good for commanding coachmen and maids; therefore it was, in a certain sense, endangered. Back then, French, what else, was considered a fully-fledged language.

Mr Chairman,

After this loose introduction, allow me to tackle briefly two subject matters of this conference.

"Where do we stand?" is included in the title of this block. This seems rather static at the first sight, I would prefer to read it "Where do we go?" I guess we could agree that the purpose of this conference is not to make a "snapshot" but rather demonstrate the dynamics of the ongoing processes.

The dynamics of the Charter is in certain aspects more intricate than the dynamics of the Framework Convention. What the Framework Convention is and what it aims to achieve has been more or less clear from the very outset. What the Charter is, has not been that clear. "When the Charter was first mooted in 1983, many thought the idea was (...) another unrealistic project dreamed up by bureaucrats and intellectuals in the Council of Europe", Mr Philip Blair rightly noted some time ago. Fortunately, the development of the Charter has proved that the sceptics were wrong: the project was realistic. But the reality is somehow complicated.

People looking for information – my two teenage sons for example - who search for the text of the Charter on the Council of Europe website find the document among conventions on minorities. Of which, by the way, there are only two. After this, it is not easy

to explain to them that the Charter is there to protect linguistic diversity. That the goal of the Charter was not to protect minorities, even if it is beyond any doubt that minority languages are spoken mainly by persons belonging to minorities. That the Charter does not even use the term minorities, it speaks about cultural heritage. That the Charter is in fact ignorant of whether a State recognises national or other minorities, or not.

This is where one can detect the roots of misunderstanding. When I first saw the concept of this conference I asked myself: Would it not just compound or contribute even more to the misunderstanding? Are the Framework Convention and the Charter "two halves of a nut in one shell", to use Pushkin´s expression again?

If my numbers are right, the Charter has scored 23 ratifications since 1992. Is it a little or a lot? And here we now stand before well-worn question: is this cap half empty or half full?

In the same year as the Charter (i.e. 1992), another two international treaties addressing culture were born. The Revised European Convention on the Protection of Archaeological Heritage has won 36 ratifications since then, the European Convention on Cinematographic Co-Production even 38. I don't intend to compare apples to oranges but the Legal Adviser is also paid for monitoring the dynamics of treaties. The example of a treaty looser is the European Convention providing a Uniform Law on Arbitration of 1966, signed by two States and even ratified by one of them over a 40 year period. Compared to that, the Charter is quite successful.

On the other hand, the Convention on the Protection of Children against Sexual Exploitation, put up for signature last October, has already been signed by 27 States in just four months. That's enviable dynamics.

The number of ratifications as such is not enough for sweeping conclusions, but it seems that a part of the European family feels some kind of discomfort in relation to the Charter. The question is: aren't certain confusions surrounding the Charter one of the reasons why some States still hesitate? Would it not be right to emphasise at this conference that the main goal of the Charter for Regional or Minority Languages was to protect endangered languages? Would it not be right to ask how do we cope with this goal? Or is this goal already outdated?

There are allegedly 239 living languages in Europe. This figure might not be accurate in scientific terms since it does not come from serious publications – I sourced it from Wikipedia, the free encyclopedia. But it might be good enough for illustrative purposes. I may assure you that my two teenage sons avoid serious publications and seek information in Wikipedia – and I am afraid they are not unique in that. At least, it is free of charge. Unfortunately, even Wikipedia does not say how many languages in Europe are endangered.

Mr Tapani Salminen, whom I unfortunately do not know in person, published some time ago (as the compiler of the European section of the Unesco Red Book on Endangered Languages) a list of European languages arranged by the level of their endangerment. He marked 9 languages as nearly extinct, 26 as seriously endangered and 38 as endangered. That makes 73 languages which would urgently need a help.

Who is competent to assess to what degree this conclusion is right? But if we admit that it is not completely wrong, we have to face a question: how many really endangered or marginalised languages in today´s Europe are helped by the Charter and its mechanisms? Have we not lost track of the true purpose of the Charter?

I can offer only a legalistic and opportunistic answer: finaly, everything depends on the will of the States, which are Masters of the Charter, without underestimating the importance of other players. Perhaps any of you, dear colleagues, is able to give a better answer.

But even if we move aside questions of such kind, I dare to affirm that among existing treaties, the Charter is one of the most complicated as to its technical implementation, especially for the States which have taken ambitious commitments under the Charter. This might explain, at least partially, why some countries needed relatively long time from signature to ratification – about 10 years, or even more.

And now my last point about the Charter. It seems that on a domestic level, at least in certain countries, the issues related to the implementation of the Charter are provoking more excitement than the issues related to the implementation the the Framework Convention, especially if they concern well-preserved and emancipated minorities. Such excitement has almost always political background, which has nothing to do with the protection of cultural heritage. This is not a good point for the Charter.

Mr Chairman,

Please, allow me now to comment briefly on the Framework Convention, to keep the balance between the two components of the conference.

The Framework Convention is fully governed by the Vienna Convention on the Law of Treaties which is an essential instrument of international law. This fact is well known, which might be the reason why we do not pay sufficient attention to it. For that matter, Pushkin is also known to everyone, but hardly anybody reads him now.

The cornerstone of an international treaty is that a State takes some commitments. That it does so on a voluntary basis. That it does so knowing that the commitments it undertakes to fulfil are necessary. That the commitments will be obliging and sometimes even compelling but, at the same time, they ensure something important.

This has brought me to the question of motivation. The Vienna Convention on the Law of Treaties is not concerned directly with the motivation of the States but it seems obvious that if a treaty is to be about something, there must also be some "carrot" for the State signing it. I admit that over many years as a Legal Advisor I have also seen treaties about nothing, but they look that way in practice too: they are alive *de jure*, but half-dead *de facto*. This is not the case with the Framework Convention; the Convention is alive and dynamic, and we do not have to worry about it at all.

On the other hand, the motivation is not given once and once only, it needs to be fed and watered, both on a national and international level. A State may be hyper-motivated in a given period of time, but its motivation may subside later. It is important that the State knows that a continuous and thorough implementation of the Framework Convention brings benefits not only to persons belonging to national minorities but to all its citizens and, ultimately, to the State itself.

A couple of times I have heard an opinion that the success of the implementation of the Framework Convention should be measured by the contentment of the minorities themselves – after all, they must know best. Well, it seems logical at first sight, but a picture

of content minorities within a discontent State seems a little bit utopian to me. And *vice versa*, of course.

When implementing the Framework Convention a balance must be always sought among a number of various factors and that balance relates to country-specific conditions. Otherwise it will simply not work under the existing system of international law. If States are to die one day, as prophesised by the Marxists for example, then, logically, international treaties, including the Framework Convention, will die as well. Only then may we speak about a qualitatively new situation in the area of the protection of national minorities, but not sooner.

Another characteristic feature of the Framework Convention as an international treaty is the *pacta sunt servanda* principle, expressly embedded in the Article 26 of the Vienna Convention on the Law of Treaties. Everyone knows what it is about: international treaties must be performed by the parties in good faith.

In this context it is worth to bear in mind that Article 2 of the Framework Convention explicitly requires that the provisions of the Framework Convention shall be applied in good faith. From the legal point of view, the note is in fact redundant as the obligation it refers to arises from international law automatically. From the practical point of view, however, it surely has its purpose as it underlines the fact that the general principle of the *bona fidae* fulfilment of obligations has a specific relevance in the area governed by the Framework Convention. It is hard not to recall the famous phrase of Charles Maurice Talleyrand: "Si cela va sans le dire, cela ira encore mieux en le disant" ("If it goes well without words, with words it will go even better.").

The *pacta sunt servanda bona fidae* principle is crucial to the implementation of international treaties. The existing system would collapse in its absence. There is no direct enforcing authority above the States which could intervene if they fail in meeting their obligations. Citizens failing their obligations know that there is a machinery of power above them that would finally force them to fulfil their obligations in one way or another. The State does not face such a risk. Of course, there are monitoring and supervisory mechanisms in place which can put some pressure on the States, but this is quite a different situation since those mechanisms have in fact been set up by the States themselves.

The above facts imply a certain but real fragility and vulnerability of the whole structure where the will and a responsible approach of the States to the fulfilment of their international commitments still remain the key pillars. The same fully applies to the Framework Convention.

Here I would like only to add that under Article 2 of the Framework Convention the States shall not only apply its provisions in good faith but also "in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States". Obviously, these principles apply not only to the Framework Convention but also to other treaties pertaining to the protection of national minorities and the rights of the persons belonging to national minorities. A number of such treaties were concluded between the States, mainly on a bilateral basis.

The experience has shown that forgetting the principle of cooperation between States, preparing unilateral measures in relation to, for example, kin-minorities and forcing them upon neighbours – this practice would lead us nowhere.

Mr Chairman, this was the last point I wanted to stress in my contribution.