



**INTERNATIONAL LEGAL GUARANTEES FOR THE PROTECTION OF NATIONAL
MINORITIES AND PROBLEMS IN THEIR IMPLEMENTATION**

WITH SPECIAL FOCUS ON MINORITY EDUCATION

Status of international protection of national minorities: ‘where do we stand?’
Statement by Manuel Lezertua
Director of the Office of the Commissioner for Human Rights

The 1990s can be characterized as a decade of rights: both individual and group rights.

The current system of protecting national minorities in Europe came into being precisely during that decade along with the political remapping of Europe. The OSCE and its High Commissioner, the United Nations and the Council of Europe – all of them made decisive new contributions to the protection of national minorities. The normative framework for protecting national minorities was already quite solid when the Council of Europe Commissioner for Human Rights began his activities in this field after the establishment of the institution in 1999. It has provided the Commissioner with a better basis when reviewing measures for the protection of minority rights in Council of Europe member states and when recommending improvements in this area.

The new decade – the first of the new millennium - provides us with an opportunity to take stock of the progress already achieved. It seems obvious today that a new convergence has taken place between individual and group rights. This is particularly visible when it comes to the protection of national minorities, on the one hand, and measures to ensure non-discrimination, on the other. These two fields, which in the past were usually viewed in separate terms, have become closely intertwined.

The Framework Convention for the protection of national minorities already included several references to non-discrimination. Its Article 6 appears to generalise this principle in a fairly broad way. Yet the European Conference against Racism in 2000, the Durban Conference against Racism in 2001 and the EU Equality Directives of 2000 added up to the momentum towards the convergence of non-discrimination and protection of national minorities. The relevance of the right of developing one’s minority identity individually or as a group with non-discrimination norms was spelled out in no uncertain terms. This relevance is also underscored by the closely related yet complementary work carried out by the Advisory Committee of the Framework Convention and the European Commission against Racism and Intolerance (ECRI).

There are several reasons for this *rapprochement*. They are intimately connected with a broader understanding of the concept of non-discrimination. The prohibition of discrimination is not simply aimed at achieving formal equality among individuals but substantive equality. This also means that the way to achieve substantive equality may require a variety of measures depending on the differences of the people concerned or the situations they encounter. Equal treatment does not necessarily mean similar treatment to everybody. The full exercise of social and cultural rights by a member of a national minority, for example, may necessitate education in both the minority language and an official language, which may not be so relevant for members of the majority population.

Positive measures form another bridge between non-discrimination and the protection of minorities. It is now more readily accepted that the objective of substantive equality for many national minorities may actually necessitate special measures to compensate for past and current discrimination they have experienced as a group. Naturally, a reasonable objective and proportionality have to be observed in the application of positive measures. Yet there may still be room for further development of this concept in the promotion of national minorities in a sustainable way from the perspective of legitimate differential treatment.

Campaigns against discrimination have also been instrumental in improving human rights education. The right of national minorities to education which respects their language and culture is not enough. It is also important that the majority population learns about the culture of national minorities. This is pivotal for mutual tolerance and general understanding of the positive contribution of cultural diversity to our societies.

It is particularly significant that the convergence of minority rights and non-discrimination has opened up new avenues for the national minorities to enforce their rights at an international level. The availability of international remedies against discrimination has widened considerably in recent years. The individual complaints mechanisms operated by the UN treaty bodies, such as the Committee on the Elimination of Racial Discrimination, form one avenue. Another can be found in the collective complaints system of the European Social Charter which is of particular relevance to national minorities as groups. The European Court of Justice can also play a role in enforcing the relevant EU legislation. Finally, Protocol 12 to the European Convention on Human Rights opens a new chapter in the work of the European Court of Human Rights in the field of non-discrimination.

Yet we must clearly understand that we are talking about convergence and not about replacing specific protection of national minorities by non-discrimination norms. These systems are complimentary even if a degree of overlap is visible. We must insist on the usefulness of the overlap because it builds bridges. It enables us to protect, and when necessary, promote all minorities, national and others, in an effective way. We also know that many individuals belong to several minorities simultaneously which further accentuates the need for complimentary protection. This bridge leads us to a deeper understanding of the meaning of equality amidst diversity and how we can reach substantive equality as individuals and national minorities.

Thank you.