



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

WITH SPECIAL FOCUS ON MINORITY EDUCATION

Experience of the Advisory Committee on the Framework Convention for the Protection of National Minorities in the Field of Education by Ms Sia Spiliopoulou Åkermark

Introduction

The aim of my presentation will be to summarise the experience of the Advisory Committee during the first cycle of monitoring of the reports submitted by States parties in the field of education. This experience is incorporated and discussed in the *Commentary on Education* adopted by the Advisory Committee in March 2006.

Education is today considered as a goal in its own right as well as a forceful tool for transmitting knowledge, attitudes and values. No other issue is given such space in the Framework Convention, with three specific provisions, as well as explicit references to education in general provisions concerning equality and intercultural dialogue. This is so because the right to education can be seen as a right in itself, but it is also instrumental as a precondition for the full enjoyment of many other rights, such as the right to participation, expression, association, and so on.

Focus in the Commentary is put on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live.

The Commentary discusses at some length the aims of education as outlined in the Convention of the Rights of the Child and how these goals relate to the protection of persons belonging to minorities. These aims include:

- the development of the child's personality, talents and abilities to their fullest potential;
- the respect for human rights;
- the development of respect for the child's parents, his or her own cultural identity, language and values, as well as for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Some of these aims, such as the development of the linguistic capabilities of a child, are understood as primarily instrumental. In these cases, education is seen as a tool for the achievement of other goals (e.g. finding employment, or participating in decision-making). Other aims of education are perceived as primordial in that they are felt as important *per se* even if there is no other rational or economic justification for this. This is the case with the development of respect for the child's identity.

The beneficiaries of educational provisions in the Framework Convention

The Framework Convention ensures rights to ‘persons belonging to national minorities’. It is clear that these ‘persons’ can be men or women, children or adults. Indeed, the provisions of the Convention do not only refer to formal school activities, but refer to education and education systems in broader terms. In recent years, the Advisory Committee has been increasingly sensitive to the varying implications of rights for persons belonging to different national minorities, or groups within minority groups, for men and women, for citizens and non-citizens.

The Advisory Committee has consistently underlined the need to respect the principle of free self-identification of persons belonging to national minorities and the existence of adequate guarantees in the treatment of demographic, ethnic and other personal data in accordance with Article 3 of the Framework Convention. At the same time, it is important that, through a combination of quantitative and qualitative tools, States make needs assessments in the field of education in consultation with those concerned. The importance of national baseline data increases as the field of education gets more and more decentralized. The Advisory Committee has concluded that the absence of such basic data cannot be used as an excuse for not acting in the field of minority education.

At the same time the Advisory Committee has often noted the absence of gender disaggregated information in the State Reports and as a consequence also in many of the Opinions of the Advisory Committee. The above remarks underline the necessity of individualised and contextualised assessments in educational work. The needs of each particular student depend on a wide range of factors that need to be monitored, assessed and taken into account in decision-making in education. This implies also that the conditions of different minorities, and different sub-groups and individuals within minorities vary and that it is not sufficient to work and shape policies on the basis of a bi-polar majority-minority model.

I will return to the issue of baseline data when discussing issues of funding.

Articles 4, 5 and 6 of the Framework Convention form a continuum of core obligations of States

In the field of education, Article 4 guarantees equal access to education and prohibits discrimination. It also explains that State Parties undertake to adopt, where necessary, positive measures to promote full and effective equality for persons belonging to national minorities. This cannot be sufficiently emphasized. The Framework Convention presupposes that States actively pursue the goals embodied in the Convention. A passive attitude may amount to a violation of the obligations provided for under the Convention. Examples of this are the absence of legislation guaranteeing rights to and in education for persons belonging to national minorities, or minority policies that are of an ad hoc and unsystematic character.

Article 5 elaborates on the necessity of promoting adequate conditions for maintaining and developing the culture and the essential elements of the identity of persons belonging to national minorities. Articles 12-14 are further explanation of what this means in the field of education.

The importance of Articles 4 and 5 lies, in that they make clear that an active and coherent educational policy is necessary in order to implement the provisions in the Framework Convention.

Article 6 of the Framework Convention requires that State Parties encourage tolerance, dialogue and mutual understanding among different groups living within the State. In the field of education, this poses demands both as regards the content of education and the choice of form, educators, structures and institutions of education. The link between Article 6 and Article 12 is strong in that both provisions support the core ethos of the Framework Convention as one of intercultural dialogue, integration of minorities in the wider society and social cohesion. State Parties need to review regularly the curricula and textbooks of subjects such as history, religion and literature, but such

reviews should also cover the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.

Due to the time restraints, it will not be possible at present to review all issues raised in the discussion of Articles 12-14 of the Framework Convention. I will therefore point to some key issues.

The scope of education

States report on the basis of a *wide understanding of education*, sometimes referred to as lifelong learning. This has also been the approach pursued by the Advisory Committee. The scope of the notion of education covers not only the basic compulsory school system, but also pre-schools, higher education, research, vocational education, adult education, education of professional groups (including the legal profession, police, journalists, government officials and politicians) and educational activities outside regular school hours (such as so-called Sunday schools and summer camps).

The Advisory Committee has often had the opportunity to emphasise the importance of **pre-school education for children belonging to minorities**. In this, the Advisory Committee shares the views of the Organisation for Economic Co-operation and Development (OECD), which has found that ‘children who participate over time in high-quality, early childhood education and care are likely to develop higher-order reasoning and problem-solving skills; to be more co-operative and considerate of others; to develop greater self-esteem; and to be better equipped to make effective transitions to compulsory schooling’.¹

While there is relatively rich information with regard to *primary education* in the Reports of most State Parties (including also pre-school education) there is much less detail as regards access of minorities to *higher education* and of availability of higher education in minority languages, history, culture. States report on various institutions conducting minority-related research, but give few accounts of the level of involvement of minorities themselves in such research and education. While primary education must be free-of-charge and compulsory, the exact extent of obligations of State Parties with regard to higher education have not been spelled out in international legal documents beyond the principle of equal access.

Most of the information provided by States as well as most of the comments of the Advisory Committee in the field of education is by State Parties – and consequently by the Advisory Committee – placed under Article 12. In addition to issues pertaining to the scope of education (in time, place and content), three core issues are raised in State Reports and in the Opinions of the Advisory Committee. They follow the structure of Article 12:

- a) Promotion of a multicultural and intercultural perspective of education;
- b) Teacher training, access to textbooks and multicultural contacts;
- c) Equal opportunities for access to education.

The wording of Article 12(1) is close to that of Article 4(4) in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992). According to the Commentary to the Declaration, *multicultural education* involves educational policies and practices that meet the separate educational needs of groups in society belonging to different cultural traditions, while *intercultural education* involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.²

¹ OECD, Policy Brief, Education and Equity, February 2004.

² A. Eide, Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2001/2 (2001), paragraphs 64-70.

In order to guarantee the *intercultural* element in education, which includes **intercultural dialogue** (Article 6 and 12), **dissemination of knowledge of minority cultures** (Article 12) and **the learning of the majority language by persons belonging to minorities** (Article 14), State Parties must make assessments of different possibilities for the structuring of teaching. As mentioned earlier this requires as a first step the collection of baseline data on the needs and aspirations of different groups and individuals.

The core task for the State is then to organise the education system in a way that allows for interaction between persons from various groups in order to encourage mutual understanding and tolerance, while at the same time ensuring the successful maintenance and development of the elements of the identities of members belonging to various groups.

Issues of Funding

Some States provide some details about the funding of minority education. The State Report of Poland indicates that local authorities running schools for national minorities receive additional (as compared to non-minority education) state subsidies (20% supplement per pupil in larger schools and 50% in smaller schools).³ Hungary reports that a local government operating minority educational institutions receives extra subsidies.⁴

Very many States provide no information on methods and levels of funding affecting minority and intercultural education. It is instructive that this seems to be the experience also in the education work of the OECD. In the Education Policy Analysis of the year 2003 the OECD had no information on the percentage of students with social disadvantages (including minority affiliation) receiving additional resources in compulsory education. Sweden, Switzerland, the United Kingdom, all well resourced countries, were not able to supply the OECD with such information. Finland and the Netherlands were among the countries with highest levels of additional support.

The State Reports received so far by the Advisory Committee provide no information on the participation of minorities in budgetary decision making with regard to education at central, local or school level.

As regards kin-state support in the field of education, the Advisory Committee has dealt with such issues under Article 12 of the Framework Convention. Article 4 is, however, also relevant when kin-state support creates differential treatment that may amount to discrimination which enhances the vulnerability of groups with no kin-states. The Advisory Committee has indeed emphasized in several opinions that over-dependence upon kin-state support may place some groups in a disadvantaged position, and has established that ‘the authorities should ensure that all the national minorities, particularly those that are numerically smaller or do not enjoy the support of a kin-state, benefit equitably from the special government programmes for national minorities’. If used prudently, kin-state support can be an asset both for the minority concerned, other minority groups as well as for the majority population. When discussing kin-state support in the field of textbooks and other teaching materials supplied by kin-states, it needs to be taken into account that such materials may in some cases not reflect adequately and correctly the experiences and aspirations of minorities concerned since they are produced in and by the kin-state by persons who do not live in the country of the minority at issue.

One should here refer to the guidelines developed by the European Commission for Democracy through Law, of the Council of Europe, better known as the Venice Commission, in its *Report on the Preferential Treatment of National Minorities by the Kin-State* in 2001.

³ State Report of Poland ACFC/SR(2002)2.

⁴ State Report of Hungary ACFC/SR(99)10.

Summary of points on equal access to education

Ensuring the access of all persons belonging to national minorities to good quality education means that States need to act resolutely in the following three areas:

- Ensuring that all children (including Roma) are duly enrolled in schools and that difficulties encountered by displaced persons or persons belonging to nomadic or semi-nomadic groups are addressed in a constructive and active way. The existence of education or some levels of education exclusively in the official language may be blocking the access to education for children belonging to national minorities or other groups (e.g. recent immigrants and refugees). It is important that education is addressed in this regard in a depoliticized manner and that the best interest of a child is kept in mind. During my last visit to the Russian Federation in the spring of 2006, I was happy to learn about the memorandum issued by the Ministry of Education in 2003 explaining that all children irrespective of residence registration and citizenship had to be admitted to schools. I am therefore concerned to receive reports, that follow the diplomatic tension between the Russian Federation and Georgia, concerning instructions issued by the law-enforcement officials to schools with a request to provide lists of pupils of Georgian nationality, including details concerning their family members, their address of residence, examples of unlawful acts or unruly behaviour, that the schools may have noted. Knowing the value attached by Russians to education, I sincerely hope that there are going to be resolute measures to ensure that political disputes do not mean that schools and individual pupils are used as tools.
- Ensuring and monitoring school attendance by all pupils, including those belonging to national minorities. Shortcomings in the availability of pre-school education, school facilities, in physical access to schools and transportation, or in ensuring safety of children in school, as well as parents socio-economic problems, lack of confidence in the educational system may all result in reluctance of parents to send their children to pre-schools and schools and a lack of willingness by children to attend classes;
- Monitoring school attainments, including absenteeism and drop-out rates, literacy, completion of studies, grades, gender disparities, access to higher educational levels and subsequently access to employment. In some cases, preparatory classes and class or individual assistants/mediators/advisors may be necessary for pupils from disadvantaged environments. Adult education is a necessary complement to the basic education system.

Languages in Education

Languages form a continuum and the exact borders (linguistic and geographic) of languages are and will remain flexible and changing. Human beings are capable of mastering several languages. Human beings can also know and use various languages at different levels and within different domains. In our times of globalization and enhanced interaction it is in any case evident that multilingualism gives strong functional, cognitive and emotional assets.

The Framework Convention itself presupposes the encouragement and support for bilingualism (through a combined implementation of Articles 12 (1) and 14). For those reasons continuous consultation with the persons and groups concerned (pupils, parents, teachers, minority representatives, authorities at central and local levels) is essential in the design of successful language education programmes. This flows also from the right to participation of persons belonging to national minorities as guaranteed under Article 15 of the Framework Convention.

The languages protected

The notion of 'minority language' is not as clear as it appears at first sight. It may mean:

- a) the language which is considered as the traditional and historical language of a minority group;
- b) the language which is used in practice by a minority group (e.g. Russian among persons belonging to the Roma minority in several countries of the former Soviet Union);
- c) the language which is used by a majority within a minority group or which is used most of the time by a minority (or a combination of both);
- d) the language which simply differs from the language of the majority.

The notion of 'mother tongue' which is sometimes used in legislation and in State Reports is equally unclear as it may mean:

- a) the language transmitted by the mother (with all the gender biases this brings regarding the transmission of cultures and identities);
- b) the language one learned first;
- c) the language one knows best;
- d) the language one uses most freely;
- e) the language with which one is identified by him or herself or by others as a 'native speaker'.

It should also be noted that the word 'mother tongue' does not appear at all in the Framework Convention. Following the principle of self-identification enshrined in Article 3 of the Framework Convention, persons belonging to national minorities and minorities as groups may therefore freely identify themselves on the basis of the language they perceive as being 'their' language.

Conclusion

The purpose of the Commentary on Education is to highlight the main issues encountered by the Advisory Committee in its work. The Commentary includes, however, also some immediately and practically useful elements such as the Inventory of Educational Issues addressed by the Committee, which is appended to the Commentary. It is my hope that this inventory can be used as a checklist and a source of inspiration by all those state and non-state actors working in the field of education.