



Organization for Security and Co-operation in Europe
High Commissioner on National Minorities

Keynote Speech by

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on the occasion of the launch of the

Graz Recommendations on Access to Justice and National Minorities

[Check against delivery]

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Excellencies,
Ladies and Gentlemen,

It is both a pleasure and an honour for me to officially launch the OSCE HCNM *Graz Recommendations on Access to Justice and National Minorities* today. This document represents the latest set of thematic Recommendations issued by my Institution. In crystalizing these recommendations, we relied on our office's decades-long experience in tackling the root causes of inter-ethnic conflict. This is precisely the perspective from which we approach the topic of access to justice and national minorities, and I would like to begin today by stressing this point.

As many of you know, the position of the OSCE High Commissioner on National Minorities was set up in 1992 specifically to provide early warning and take appropriate early action to prevent ethnic tensions from developing into conflict. The High Commissioner's *mandate* is to be "an instrument of conflict prevention at the earliest possible stage".¹ Consequently, within the OSCE's comprehensive security architecture, the HCNM was placed within the first – the political-military – dimension. As such, and in keeping with the rigours of my mandate, the High Commissioner only becomes engaged in those minority-related issues that have potential security implications, rather than acting as a minority-rights monitoring body or engaging in hands-on human rights work. Over the years, this approach has guided successive High Commissioners' engagements on all matters, including those pertaining to access to justice.

In the context of the OSCE "*acquis*", access to justice for persons belonging to national minorities – as well as for everyone in general – forms part of the universally recognized human rights which represent the very foundation for peace and security. This principle is reflected in many OSCE instruments, including the 1990 Copenhagen Document, the 1991 Moscow Document and the 1992 Helsinki Summit Declaration, to name but a few. These documents stress yet again that respect for human rights and the rule of law are prerequisites for lasting peace and comprehensive security in the OSCE area.

¹ See Part ii of the CSCE Helsinki Document 1992, www.osce.org/mc/39530?download=true.

From the outset, this understanding has also served as the underlying rationale for my Institution's work on access to justice issues. The very first High Commissioner on National Minorities, Max van der Stoel, back in the 1990s validated *the need* for the High Commissioner to work on access to justice by crystalizing the following maxim: "Where there is injustice, there is insecurity and this in time gives rise to instability and ultimately threats to peace".² Thereafter, successive High Commissioners have repeatedly warned that to deny justice to individuals and groups may have direct and grave repercussions on societal cohesion, as well as on peace and stability, both within and between States. We have also tirelessly stressed that stability and security are best served by ensuring that persons belonging to national minorities can, on a par with all other members of society, effectively enjoy all their rights, including the right of access to justice. Today, these core principles have also become enshrined in our Graz Recommendations.

Let me say a few words about *the nature* of such thematic Recommendations and Guidelines, issued by my office. The drafting of general policy Guidelines or thematic Recommendations has, over the years, become a key activity of my Institution. Such documents identify particular issues and themes that have a bearing on national minorities and present a conflict potential, often in many States and across regions. To date, the HCNM has issued thematic Recommendations and Guidelines on the education and linguistic rights of persons belonging to national minorities, the participation of minorities in public life, media broadcasting in minority languages, policing practices in multi-ethnic societies, national minorities in inter-State relations, and the integration of diverse societies. All these documents were developed with internationally recognized independent experts, under the overall supervision and guidance of the HCNM. Our Recommendations and Guidelines clarify international standards and provide practical guidance for States seeking solutions and policy options for specific inter-ethnic problems, with the ultimate goal of facilitating the adoption of adequate, rights-compliant State policies that alleviate tensions related to national minorities, thereby furthering the ultimate conflict prevention goal of my Institution. I should also emphasize that – unlike the country-specific recommendations which by virtue of my mandate I must provide in strict confidence – these thematic Recommendations and Guidelines are public documents, which help explain and publicize the work of the HCNM.

² "Peace and justice, power and principle: From Nuremburg to The Hague", Statement of Max van der Stoel on "Punishing war crimes in the Former Yugoslavia: a critical juncture for the international community", vii *The Finnish Yearbook of International Law* (Martinus Nijhoff Publishers, The Hague, 1996) pp. 334–340. Based on a statement made at the Institute for Human Rights, Abo Akademi University, Finland, 14–15 June 1996.

The Graz Recommendations on Access to Justice and National Minorities that we are launching today complement this select series of thematic Recommendations and Guidelines. As mentioned earlier, they are underpinned by our work on national minority issues, primarily in the context of State-building and consolidating societies. Based on this experience, the Graz Recommendations recognize that in order to build well-integrated and cohesive societies, States have a duty to guarantee to everyone, including persons belonging to national minorities, the effective enjoyment of all their rights through access to justice.

Let me say a few words about *the actual content* of these Recommendations. In an effort to guide States in developing adequate strategies and policies on access to justice and national minorities, the Graz Recommendations put forward ten specific principles. They are all clearly spelled out in the document, so I will not reiterate them now. I will only say that they are based on key rule-of-law principles, such as non-discrimination and equality, the right to a fair hearing within a reasonable time frame by an independent and impartial tribunal established by law, the right to legal assistance and language assistance, and the right to an effective remedy.

Significantly, the Graz Recommendations construe the concept of access to justice as being something much broader than merely access to courts. For this reason, they encourage States to also establish effective and independent human rights institutions, such as Ombudspersons and similar, whose mandate could efficiently complement that of the judicial bodies in ensuring access to justice for all members of society.

The Recommendations also touch upon the composition of courts, tribunals, prosecution offices and law-enforcement bodies, and emphasize that in order for these State bodies to be representative of all segments of society, and to enjoy wide legitimacy and everyone's trust, they must reflect the diversity of society, and therefore also employ persons of minority background among their personnel. This key message of "adequate representation" is a fundamental principle that we have reiterated in many contexts and on many occasions, including in previous thematic Recommendations and Guidelines issued by my office.

Last but not least, the Graz Recommendations also focus on the crucial point of victim support services and witness protection measures, which must be sensitive to the needs of persons belonging to national minorities, and those of minority women in particular.

I would like to emphasize that our Graz Recommendations build upon HCNM's two-and-a-half decades of *institutional experience of working on access to justice issues*, which also deserves special mention. Such work has included country-specific advice, general thematic recommendations, but also various project activities and specific research related to access to justice. An example of the latter was the *Report on the Situation of Roma and Sinti in the OSCE Area*,³ issued in April 2000, in which we paid particular attention to issues of racial violence (private, collective and by the police) and discrimination in employment, public services and in the administration of justice.

Over the years, the Institution of the HCNM has also consistently sought to streamline minority issues, including those related to access to justice, in various policy documents produced by other OSCE bodies. One such example was *The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*;⁴ a key document on judicial independence developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The HCNM contributed a key principle to this document, stressing that the composition of the judiciary should reflect the diversity of the population as a whole, and encouraging States to adopt measures to enhance the representation of minorities in the judiciary.

Concerns about access to justice were also addressed in several Human Rights Assessment Missions, undertaken jointly by the HCNM and ODIHR at the request of a particular participating State or the OSCE Chairmanship-in-Office. The task of such missions has been to assess compliance of the human rights and minority rights situation in the respective country with relevant OSCE human dimension commitments and other applicable standards, through independent fieldwork and in line with established methodologies, in keeping with the two Institutions' respective mandates.

Finally, the HCNM's attention to access to justice issues can also be traced through the choice of nominees for the prestigious Max van der Stoel award. Over the years, several of the recipients of this award have been champions of safeguarding access to justice for

³ See the OSCE HCNM *Report on the Situation of Roma and Sinti in the OSCE Area*, www.osce.org/hcnm/42063?download=true.

⁴ For more information on *The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*, see www.osce.org/odihr/109880?download=true. The Recommendations themselves are available online at: www.osce.org/odihr/KyivRec.

national minorities. Examples include the European Roma Rights Centre from Hungary, which won the 2007 Max van der Stoel award in recognition for its decades-long advocacy work on seeking justice for Roma victims of hate crime and other human rights violations. A more recent example was Spravedlivost, a non-governmental organization based in Jalal-Abad, Kyrgyzstan, which won the 2014 Max van der Stoel Award for its work on protecting vulnerable groups, including national minorities, in Kyrgyzstan, and particularly for its free legal aid and efforts to safeguard access to justice for ethnic Uzbek victims of the June 2010 events in southern Kyrgyzstan. The choice of such organizations as recipients of the Max van der Stoel award attests yet again to the importance which my institution affords to safeguarding access to justice for national minorities.

Excellencies,

Ladies and gentlemen,

We shall in a minute hear more about *the drafting process* of the Graz Recommendations. I already said that they are based on the accumulated experience of my Institution, and that they combine both a normative and practical approach. In a sense, the Graz Recommendations crystalize our experience and knowledge of the topic, summarizing it into a set of crisp, specific recommendations. For initiating the drafting process, I would like to give due credit to my predecessor, Ms. Astrid Thors, who during the 2015 Human Dimension Implementation Meeting announced that the HNCM would embark on the development of a new set of recommendations on access to justice and national minorities.

At the same time, in addition to the extensive in-house discussions and drafting sessions within the office of the HCNM, we were also fortunate to have had many external experts engaged in various consultation stages as well, including colleagues from the OSCE/ODIHR and other distinguished lawyers and members of academia, many of whom are present with us here today. Once again, I would like to express my sincere gratitude to all of them for their valuable input to this document, which without their contribution would not have been the same.

Our subsequent session will consist of a panel of experts who will debate key points from the Graz Recommendations. I encourage you all to take part in these discussions, so that we can review together the main challenges faced by persons belonging to national minorities in their

quest for justice, and come up with relevant suggestions for policymakers from the various participating States. I also welcome your ideas on the best ways to promote the Graz Recommendations in the coming years. Our main goal is to ensure that these recommendations, besides serving as a reference document on how to safeguard minorities' quest for justice, also become a practical and effective tool which can prove to be of real assistance to all those countries which seek to develop policies on access to justice that reduce tensions involving national minorities. For it is only then that the Graz Recommendations will truly contribute to the fulfilment of our main objective of conflict prevention.

Thank you for your attention, and I look forward to our discussions.