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**“20 years of Framework Convention for the Protection  
of National Minorities, 20 years of interculturalism, cultural  
diversity, tolerance, integration”**

**Cluj-Napoca, 30 April 2015**

**Gianni BUQUICCHIO**

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## DISCURSURI/SPEECHES

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“20 years of Framework Convention for the Protection  
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*Gianni BUQUICCHIO\**

***Abstract:** This represents the speech of Mr. Gianni Buquicchio, the president of the Venice Commission, at the International Conference regarding the protection of national minorities, held at Cluj-Napoca, on the 30 of April 2015.*

***Key-words:** Protection of national minorities, Convention for the Protection of National Minorities, diversity, integration, inter-culturalism.*

*Honourable Rector,  
Mr Minister,  
Ladies and Gentlemen,*

It is a great honour and pleasure for me to be invited today to address this important event dedicated to the celebration of the 20<sup>th</sup> anniversary of the opening to signature, on 1 February 1995, of the Council of Europe’s Framework Convention for the Protection of National Minorities, the only international legally binding instrument dealing with the protection of national minorities in all its dimensions, well-known since then by all of us as the Framework Convention.

Today’s Conference also marks the 20<sup>th</sup> anniversary of the ratification, on 29 April 1995, of the Framework Convention by Romania, as the first state party to this Convention, thereby giving international legal expression to its firm commitment for the protection of its national minorities.

I should first like to thank you, Mr. Rector, for your warm words of welcome and to thank your University and the Ministry of Foreign Affairs for inviting me to be here with you today.

I am delighted to join you for such a special occasion and, as rightly pointed out in the title of the conference, to celebrate with you 20 years of inter-culturality, of living together in dialogue, respect and mutual understanding in the Romanian society.

This conference is only the first of a series of events planned until the end of 2015 to celebrate the efforts and the substantial progress made since the ratification of the Framework Convention on the path of the development and consolidation of a more cohesive society, respectful of diversity and of the rights of all.

I am convinced that these events will also serve as a perfect opportunity to discuss the major challenges that your country has been facing in the implementation of the Framework Convention, to learn from this experience and to take a look at the new challenges that lie ahead.

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*\* President of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, Doctor Honoris Causa of the University of Bucharest, ex-Secretary of the Venice Commission.*

It is also particularly fitting that this event is taking place here in Cluj-Napoca, this beautiful city that is home to many identities - ethnic, cultural, linguistic and religious - and which made this diversity its own identity.

Your University is one of the most successful examples of the efforts made by Romania to promote multicultural dialogue and diversity while at the same time providing conditions for the preservation and development of specific identities.

This is certainly one of the reasons why your city had the honour to be designated as the 2015 European Capital of Youth. Let me congratulate you, Honourable Rector, for hosting this event and you, Dear Minister, my dear friend, for supporting this excellent initiative.

*Ladies and Gentlemen,*

As you certainly know, the Venice Commission's main task has been, from its very first years, to advise States in the process of adoption of constitutions and laws in conformity with the standards of Europe's constitutional heritage. It was important for us to contribute in this way to their effort to lay down the foundations of a new, democratic society, governed by the rule of law and based on commonly shared values.

The respect and protection of national minorities and their identities are undoubtedly, and must be, a prominent dimension in this process. As Vaclav Havel once said so well,

*"One aspect of the immense and wonderful colour and mystery of life is not only that each person is different and that no one can perfectly understand anyone else, but also that groups of people differ from one another as groups: in their customs, their traditions, their temperament, their way of life and thinking, their hierarchy of values, and of course in their faith, the colour of their skin, their way of dressing and so on.... This "otherness" .....can of course be accepted with understanding and tolerance as something that enriches life; it can be honoured and respected, it can even be enjoyed."*

We can safely go further to say that the protection of this otherness and therefore of diversity, the promotion of tolerance, dialogue and mutual respect between all, are essential requirements of a democratic society, and a good indicator of its maturity. At the same time democracy is the only system capable of dealing with the problems of minorities in a peaceful, fair and just way.

It is in that spirit that the Venice Commission has actively contributed, from its earliest years, to the definition of rights, principles and standards for the protection of national minorities and to the dissemination of good practices in this field.

Since its creation in 1990, the Venice Commission has been closely involved in the efforts made to provide an instrument guaranteeing minority rights at the European level. In February 1991, at the request of the Parliamentary Assembly of the Council of Europe, the Commission proposed a draft "European Convention for the Protection of Minorities."

This draft already set out an extensive range of rights for minorities, while striving to find a balance between the minimum level of protection to guarantee to minorities and the duties incumbent on them.

It included, *inter alia*, provisions relating to the use of language before public authorities and to minority education.

While minorities were defined as a group, the protection guaranteed to them in various fields placed emphasis on the individual dimension of their rights.

A threefold oversight system was proposed, with a mandatory system of periodic reports and two optional supervisory mechanisms - the interstate complaint and the individual complaint.

The draft was never adopted by the Council of Europe's Committee of Ministers. Another way was chosen.

Yet, apart from the controversial issue of the definition and to some extent the proposed monitoring system, which had been considered too binding, our draft has been an important reference document in the elaboration of the Framework Convention and its basic elements have been largely taken over by the Convention. The Venice Commission also played an active role in the development work of the latter.

There is no doubt, the entry into force of the Framework Convention in 1998, the first ever legally binding instrument on minority rights, marked the beginning of a new stage in minority protection.

A common, multilateral, platform for dialogue and action was offered to States to address the issue of minorities in a harmonized way. I recall that the Convention is open to accession by non-member States of the Council of Europe.

The key actors are the States as the duty bearers and the persons belonging to national minorities as the rights holders. The Framework Convention makes it clear from its Article 1 that it is a human rights instrument designed to protect national minorities and to promote their rights, and as such falls within the scope of international co-operation.

I see it as an unquestionable qualitative leap that, after long years of reluctance and hesitation, States have been able to agree on the need to address minority rights as fundamental rights to which all should have access, regardless of ethnic origin, language, culture, traditions and history of their community. This approach essentially endorses one of the general principles laid down by our 1991 draft.

Over the years, the Framework Convention has become a *de facto* yardstick and safety net for minority protection in Europe. It provides States with excellent guidelines for their legislation, policies and practices, through programmatic, as well as specific, action-oriented, substantive provisions.

In addition, it may serve as a peaceful platform for interstate dialogue, when the threat of inter-ethnic conflict arises, although its multilateral dimension was privileged as an asset from its launch.

Described originally as a weak instrument, lacking precision and commonly agreed definitions, the practice has shown that its “weakness” was its strength. By leaving States with considerable discretion to adapt the implementation measures to national realities, the Convention was more attractive.

Thirty-nine States are now bound by this treaty. Minority issues less and less lead to crisis situations; minority protection has become an integral part of ordinary public policies with the minorities themselves increasingly involved in devising and implementing those policies.

The Framework Convention’s monitoring mechanism has been instrumental to its implementation. In particular, its independent supervisory body, the Advisory Committee, has played a facilitating role by bringing duty bearers and rights holders together, by interpreting the Convention and giving it life and - thanks to a good understanding of national realities - by ultimately contributing to making it owned and valued locally.

The Venice Commission has remained actively engaged in the clarification and promotion of minority standards both through its thematic reports and when advising states on draft minority rights or related domestic legislation. Its activities in this field are complementary to the supervisory work of the Framework Convention.

Under its mandate, it was the Commission’s duty to make sure that a sound constitutional and legislative framework, in line with the principles enshrined in the Framework Convention, was put in place by States as a guarantee for the effective protection of their minorities and the full enjoyment of individual rights and freedoms by all.

In our country opinions, we examined laws or draft legislation dealing specifically with the protection of national minorities (Hungary – 1993, Republic of Moldova (1995 and 1999), Croatia (1996, 2002), Bosnia and Herzegovina (2001), Serbia and Montenegro (2003), Lithuania (2003), Romania (2005), and Ukraine (2004). We also examined constitutional provisions of relevance for the rights of minorities as in the case of Hungary (in 2012), Romania (in 2014) or of Croatia.

At the request of the Parliamentary Assembly in 2002, we undertook the complex and sensitive task of identifying groups of people that may be covered by the Framework Convention in Belgium, once the Convention is ratified by this country.

It soon became obvious to us that a genuine protection of minorities involves *the recognition of their existence and their identity*, as well as, under the principle of equality, *the participation of persons belonging to minorities in public life*.

Thus, we had to deal with the key issues of *recognition as a subject of minority protection and access to this protection*. We also had to examine *definitions of national minorities and minority lists* provided by national constitutions and laws, and to acknowledge the *difficulties arising for those remaining outside this framework* (as you can see in our opinions on Bosnia and Herzegovina and Croatia in 2001).

We also investigated the delicate issues of the *use of the citizenship criterion* in the definition and the protection of national minorities, and *the involvement of kin-States* in the protection of their minorities abroad.

When the Commission adopted in October 2001 its *Report on "preferential treatment of national minorities by their kin-State"*, the reflection about the question of the acceptable degree of involvement of kin-States in minority protection was only starting to be discussed.

At that stage, there was little experience, and the principles outlined in the report needed to be confronted with the practice.

The Report was later considered to have set out acceptable standards of conduct for States in their relations with kin-minorities residing on the territory of another State.

In particular, as you certainly know, it served as a mediation tool between Hungary and Romania in their dispute over the Hungarian "Status Law".

As to *the citizenship criterion*, the Commission initially pointed out, in its country opinions, that limiting the definition and the protection of "minorities" to citizens only, was not, in itself, contrary to States' obligations under international law, provided that non-citizens identifying themselves as belonging to a national minority enjoyed, on an equal footing, the fundamental rights to which everyone is entitled (see Croatia, Opinion on the Constitutional Law on the Rights of National Minorities, March 2003).

Following a more dynamic tendency - in the related debate in international law - to extend minority protection to non-citizens, the Commission took a clearer stand when it concluded, in its *2006 Report on non-citizens and minority rights*, that it was preferable that States consider citizenship as a legitimate condition for accessing *certain* minority rights, rather than as a constitutive element of the definition of "minority".

In the Commission's view, the scope of the minority rights had to be understood in an inclusive manner and these rights should be restricted to citizens only to the extent necessary (see also the 2007 Opinion on the Constitution of Montenegro).

In a broader perspective, we were interested in *the diversity of legal models of minority protection in Europe*, their national characteristics, as well as the aspects which can serve as a useful source of inspiration at the European level (as already laid down in our *Report on the protection of minorities of 1994*).

Further important matters submitted to our consideration were touching upon complex issues such as: *territorial integrity, local self-government and territorial administrative reforms* and their impact on the protection of minorities and their identities (as was the case in the opinion adopted in 1999 in relation to the Republic of Moldova).

Special attention was devoted by the Commission *to the participation of minorities in political life, in the elected organs of the State and especially in the national Parliament*. This involved the examination of broader issues of electoral law, such as the influence of electoral systems on the representation of political groups and the importance of political parties of national minorities as a factor in the representation of such minorities.

The Commission's *2000 Report on electoral law and national minorities* points out that only a few states have established specific rules on the representation of minorities in elected bodies.

The participation of persons belonging to national minorities in public life through elected office does not therefore arise from the application of special rules for minorities, but from general electoral rules that are likely to increase the chances of success of the candidates from minorities (i.e. exceptions to threshold rules, reserved seats, over-representation of regions where the minority is the majority).

Also, in our *2008 Report on the issue of dual voting for persons belonging to national minorities*, we concluded that, where specific rules on the representation of national minorities are retained, these should remain exceptional measures, justifiable only when they are essential for the integration of minorities and implemented in accordance with the principle of proportionality.

More specific identity issues, such as *language*, have also been the subject of our reflection. It was essential for the Commission, in view of the high sensitivity of such issues, to adequately tailor its recommendations on State language policies and their impact on the linguistic identity of minorities to the social, historical and political background of the country (Slovakia and Ukraine).

It became more and more clear to us, when drafts have been submitted to the Commission repeatedly, that the issue of minorities and their identities can only be addressed through a gradual approach based on dialogue, mutual understanding and sometimes compromise.

Furthermore, it was obvious that, beyond the commitments undertaken by States, the approach favoured is primarily based on policy choices and that, in general, the way minority issues are handled is a matter of mutual trust between the majority and minorities.

*Ladies and Gentlemen,*

The co-operation between the Venice Commission and Romania has always been extremely fruitful. Romania turned to the Venice Commission as a reliable partner to whom it could bring the problems it was facing, to be told of other countries' experiences, and find ideas and advice on how to solve these problems.

As part of this excellent co-operation, in June 2004, the Commission adopted an *Opinion on the draft law concerning the support for Romanians living abroad*. Subject to some - important - clarifications and specifications, the draft was considered to be generally in conformity with applicable principles and standards, as referred to by the Commission in its report on the Preferential Treatment of National Minorities by their Kin-State.

In October 2005, the Commission adopted an *Opinion on the Draft "Law on the Statute of National Minorities Living in Romania"*, aimed at introducing the model of "cultural autonomy" for national minorities as a novelty in the Romanian legal order.

We pointed out that, although, in principle, it could constitute a satisfactory framework for the protection of minority rights in Romania, the draft also contained certain important limitations and uncertainties. We therefore recommended that the shortcomings noted be addressed through appropriate amendments in order to ensure its full compliance with international standards.

The Commission also examined constitutional provisions related to minority protection on several occasions, including most recently in March 2014, when the Romanian authorities turned to it to seek advice in the context of the revision of the Romanian Constitution.

*Ladies and Gentlemen,*

It is certainly not the task of the Venice Commission to monitor minority protection in your country. The Commission was nevertheless pleased to note, on all

occasions, Romania's positive and constructive approach to the protection of minorities, as well as its authorities' genuine concern for the respect of the Framework Convention and other applicable standards. Romania was also a pro-active partner for us when preparing our general reports on issues of interest for minority protection.

Finally, I was informed that the organisers of today's event have opted to focus, for the forthcoming debate, on the issues of diversity, dialogue and mutual understanding; these concepts are highly valued by Romania in its continuous effort to ensure the harmonious integration of all within society.

I intentionally started my presentation today with some words on the acceptance of otherness and its importance as something that enriches life, can be respected and honoured.

I see it as a pre-requisite for all kinds of measures, policies, frameworks for the protection and development of both minorities' and majorities' and their successful interaction.

I am conscious however that, as enriching as cultural diversity is, managing it, living harmoniously in a diverse society is a challenge. Moreover, diversity is a dynamic phenomenon, developing as society develops. Multiple and dynamic, it has become a non-negotiable feature of modern society, whether one likes it or not, whether one views it as an asset or as a problem.

Our Commission has always encouraged intercultural dialogue based on equality, tolerance and mutual respect. As constitutional lawyers, we can certainly make an important contribution to intercultural dialogue and peace. I remain convinced that an open exchange on democracy, human rights and the rule of law will gradually lead to a common understanding of these principles by all, majorities and minorities alike.

I am pleased to note that the "Romanian model" of protection of the rights of persons belonging to national minorities is today presented as one based on recognising and appreciating diversity, valuing inter-culturality and a means to develop a diverse but cohesive, integrated and peaceful society.

*Thank you very much for your attention!*