Balázs Vizi

The European Union and the Rights of Ethnic Minorities[1]

– A short introduction to a yet immature relationship –

The European Union (EU)[2] was formed loaded with numerous contradictions after World War II. The interest of the economic integration proclaimed to be of foremost importance[3] was crossed many times by the political debates and conflicts based on the nation-State strategies of the member States. Although the political idea of the union of European peoples accompanied the entire integration process, this–with the exception of economic policy–could not seriously transform the political sovereignty of the member States up to the present. The means of political integration has not come to a rest: the principles asserting the fullest member-State sovereignty circulate together with the federalist ideas within the political common talk of the Union. Disagreement is palpable especially with regard to those fields, which concern both the foreign and internal affairs of the Union. The most pronouncedly diverging interests emerge in these cases and they take shape from the outside in the hesitation of the Union. The same can be perceived with regard to the enlargement and the formation of the common defence policy as well. In spite of this, the member States of the Union have managed to come to a common standpoint in many fields. It is usually on this basis that some unified approach evolves which determines the future policies of the organs of the EU in connection to a given issue.

The protection of human rights could be considered such a field in the past decade. For a long time, it seemed that the EU member States made use exclusively of other international organizations, first of all the framework of the Council of Europe (CoE) in the development of the international protection of human rights. However, the expression of the protection of human rights became inevitable by the 90s within the European Union as well. This is indicated by the fact that the importance of the protection of human rights has become more and more forcefully present in the foreign policy of the Union–and the member States–since the 80s. Another manifestation of this was that after lengthy preparations, the Council approved its own human rights document, the

[1] I spent the 2000/2001 academic year at the Katholieke Universiteit Leuven with a Soros-OE scholarship.

[2] The current European Union was formed from three organisations: the European Coal and Steel Community (ECSC) was created in 1951; the Rome Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) in 1957. These three communities were called the European Communities after the merger of their directing bodies in 1967. The Maastricht Treaty established the European Union based on these organizations in 1992. In the current study, I extend the European Union designation and apply it also the earlier integration organizations.

[3] See e.g. the Preamble of the Maastricht Treaty.

Charter of Fundamental Rights, at the Nice Summit in December 2000. However, as we will see, no similar advance has been made with respect to minority rights.

The aim of the present essay is to give you a short review primarily of the legal instruments or, more precisely, instruments of legal character currently at the disposal of the European Union and the role of minority rights in the foreign policy of the EU. Let us point out: today there exist no minority rights established on the level of the Union. What is more, there is no unified EU minority policy either. It can be often heard that Europe is the 'Europe of Minorities'.[4] However, it cannot be told as of yet, whether or not this will mean the safeguarding of minority rights on the level of the Union. The currently existing modest instruments can serve only as indications in this respect.

Today, it is more and more accepted within the international community that the minority rights, together with the fundamental human rights–being derived from them –, should be granted international protection. This is often acknowledged also by the principal institutions and the member States of the European Union.

The 1990s began with an upswing of minority protection legislation within the European international organizations: within the framework of the Conference on Security and Cooperation in Europe (CSCE, Organization since 1994–OSCE) just as in the Council of Europe, noteworthy and important documents were born at the beginning 90s, as compared to the previous decades, on the international protection of the persons who belonged to national minorities. In order to illustrate this, it is enough to consider the Copenhagen Document of the CSCE of 1990 (especially Articles 32–40) or the two essential CoE Treaties, the European Charter for Regional or Minority Languages (1992) and the Framework Convention for the Protection of National Minorities (1995).[5] The member States of these international organizations attached great importance to the peaceful settlement of the ethnic conflicts revived after the dissolution of the Central and East European dictatorial regimes. However, these endeavours often failed and became diluted for fear of the supposed or real injuries of the national sovereignty of States. Besides this, the minority issues frequently crossed in the past decade the legal frameworks adopted on the international level and, in fact, even the 'territorial waters' of the internal affairs of the States as well; they appeared among the most vital questions of international politics (e.g. Kosovo). Several occasions have rendered it evident in this sense that the settling of the minority question did not depend solely on the establishment of the appropriate legal conditions.

The dual nature–political and legal–of minority protection is present within the EU as well: it is exactly this duality which makes the formation of minority rights which would be

[4] Most recently e.g. Romano Prodi, President of the European Council pointed this out during his sojourn in Budapest. *Hungarian News Agency, April 15, 2001.*

[5] In detail about this see Kovács, Péter, *Nemzetközi jog és kisebbségvédelem* [International law and minority protection]. Osiris, Budapest, 1996. from p. 106 on; Bíró, Gáspár, Az etnikai és nyelvi kisebbségek kulturális jogai a nemzetközi jogi dokumentumokban [Cultural rights of ethnic and linguistic minorities in documents of international law]. In: *Az identitásválasztás szabadsága* [Freedom in choosing the identity]. Osiris–Századvég, Budapest, 1995. pp. 49–62. or Bíró, Gáspár and Taubner, Zoltán, A nemzeti kisebbségek jogainak kodifikációs munkálatai az Európa Tanácsban 1992–1993 [Codification works of the rights of national minorities in the Council of Europe, 1992-1993]. In: Bíró, Gáspár, op. *cit.* pp. 66–87.

valid for the whole of the Union immensely more difficult as compared to human rights. In the fifteen member States of the EU, there are more than 30 million people living as members of some linguistic, ethnic or cultural minority.[6] The rights granted to these minorities greatly differ from one State to another. The member States have not even found a common denominator with regard to the recognition of the existence of minorities either.[7] On the other hand, the Union has paid an increasingly closer attention to the issue of minority protection (toward third States), as to a token of the consummation of human rights, in its common foreign policy agenda, and especially in case of Eastern enlargement.[8]

The leading officials of the EU have expressed it over and over that the EU considered the protection of minority rights–as a condition of international security and stability–an important principle of its external relations; yet, it would be difficult to specify the exact content of this on the basis of the internal laws or policies of the Union. Not even indirectly can this be inferred. For example, although the EU itself lays an emphasis on how important it considers the role of the Council of Europe and its codification achievements in the field of minority protection,[9] the member States have been reluctant to incorporate any of the CoE minority protection treaties into EU legislation; moreover, certain member States reject even the idea of joining the CoE treaties.[10]

When it comes to the understanding of the relationship of the EU and minority protection, one cannot forget about the fact that although the political dimension of the Union has been gaining strength to a never seen extent ever since the Maastricht Treaty (1992), the parties concluding the treaty have not yet given a mandate to the organs of the EU with regard to the ethnic and linguistic minorities. The member States of the EU have always regarded the minority question as belonging to their internal affairs[11] and with only a few well-known exceptions (e.g. the minority rights of the Swedish or the Lapps in Finland and the Germans in South Tyrol), they have been unwilling to deal with minority protection. If we think about how different the laws are

[6] Estébanez, *op. cit.* p. 133.

[7] The classic example is France, which is consistent in claiming that no minorities live on its territory. See e.g. the reservations in connection to Article 27 of the *International Covenant on Civil and Political Rights*. Quoted in Estébanez, *op. cit.* p. 133. It can be reached also from the home pate of the United Nations: *www.un.org*

[8] Cf. with parts of the *Agenda 2000* which are related to minorities. It can be reached at: *http://www.europa.eu.int/comm/enlargement/intro/ag2000_opinions.htm*

[9] See e.g. the '*Agenda 2000*' Report of the Commission (1998)

[10] The *European Charter for Regional or Minority Languages* has been ratified only by five of the fifteen members of the European Union (Denmark, Finland, the Netherlands, Germany, and Sweden). Belgium, Greece, And Portugal have not even signed it. The Framework Convention for the Protection of National Minorities–from among the EU members–has not been signed by Belgium and France, while Greece, Luxemburg, and Portugal have not ratified it (on March 1, 2001)

[11] This is the dominant conception also in the Council. The Greek Parliament adopted a law on the return and accommodation of Greeks living on the territory of the Commonwealth of Independent States to those territories in northern Greece, where sizeable Macedonian and Turkish minorities are resident. The Council declared in its response to the written question inquiring about the acceptability of this 'it is not up to the Council to comment on matters which are the responsibility of a Member State'. OJ 2001 C 26/E092, *Written Question to the Council* E-0636/00

among the countries of the EU members with respect to the protection of minorities and minority issues of what nature are on their agenda (just to mention the most serious conflicts: e.g. Corsica, Northern Ireland, the Bask separatist movement), then the connection between law and the emergence of conflicts becomes evident.

What might be the reason of the fact that despite its growing concern, the EU has not reached the point of explicitly declaring its commitment to minority rights? One cause is, naturally, that European integration (in spite of the presence of political considerations throughout it) is basically an economic process.[12] As the economic sphere enjoys priority, it has not even occurred that the EU should receive such sphere of authority with which it could influence or co-ordinate the way the members States treat their ethnic and cultural minorities. From a legal point of view, beside this–historical after all–reason there was also another factor which played a role in this unconcerned behaviour: the EU, as opposed to other European regional organisations, cannot be defined as a classical international entity. Instead, it is a supranational one. This means that it is more difficult to apply such full-fledged solutions in the European integration which would belong to the sphere of political or quasi-legal measures.

The enforcement and the supervision of implementation have a prominent role in EU law in comparison to other international organizations. In compliance with this, it is very significant that no contractual article (apart from the stray references to this in the earlier accession treaties) could be applied to the protection of minorities–not even indirectly–before the signing of the Amsterdam Treaty (October 2, 1997; came into force on May 1, 1999). Yet, one of the principles of integration is that every community act has to be based on an article of the founding treaties. This issue is present in the Amsterdam Treaty only in the form of combating discrimination based on (among others) *'racial or ethnic origin, religion or belief'* (Article 13). Today, this is the highest-level (and almost only) reference in the acquis communautaire which can be applied–although indirectly–to the protection of minorities.

Nevertheless, there are two reasons for which it is worth discussing the relations of the EU and minority rights: 1.) owing to the changes of the foreign affairs of the past decade and the East European enlargement process the minority issue has become highly valued in the foreign and security policy of the EU–in this respect, it is unlikely that the double standards applied by the EU in its external and internal criteria at present can be maintained for long; 2.) the role played by the Union in the field of protection and the fullest realisation possible of fundamental human rights and liberties has

[12] In general on the political roots of the EU, see e.g. Nugent, Neill, *The Government and Politics of the European Union.* Macmillan, London, 1997. pp. 4–81. or Kende, Tamás (Ed.), *Európai* közjog *és politika* [European public law and politics]. Osiris, Budapest, 1998. Chapters 1–3. In general on minority protection, see de Witte, Bruno, *Politics versus Law in the EU's Approach to Ethnic Minorities.* EUI working papers, RSC No. 2000/4. European University Institute, Florence, 2000.; Estébanez, Martin 'The protection of national or ethnic, religious and linguistic minorities' In: Neuwhal, N. A. and Rosas A. (Eds.), *The European Union and Human Rights.* Martinus Nijhoff, The Hague, 1995. pp. 133–163. or a short review: Toggenburg, Gabriel, 'A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities' of the European Integration online Papers (EioP) series found at: *http://eiop.or.at/texte/2000-016a.htm.*

been reinforced especially since 1997; with this approach, it is hardly to be expected that minorities will continue to be bypassed in the long run.[13] I believe that in spite of the contradictory situation, the issue will appear more and more emphatically in the policies of the EU (and maybe once in its laws too).

The following section aims at providing an overview about, on the one hand, the current political and legal instruments of the EU and, on the other, the role of minority protection in the foreign policy of the EU. At the same time, there will be only a short reference to the role of the minority issue in the enlargement policies of the EU, for its comprehensive and accurate introduction would call for a separate analysis.[14] Given the precedence of the acquis communitaire over national law, certain authors make a distinction between 'positive approach' and 'negative approach'. They understand those acts of the EU institutions that concern explicitly the minorities under the first one, while they indicate the harmony of those laws and measures with regard to the minorities of the EU, and national laws under the other.[15] I am going to deal solely–although without the pretension of completeness–with the acts of the EU institutions concerning the minorities and I disregard this time the otherwise intricate relationship between the acquis communitaire and national laws.

The European Parliament

It was the European Parliament among the principal institutions of the EU (the Council, the Commission, the Parliament, and the Court) to deal with minorities in a separate resolution already in 1981. The Parliament is essentially a political institution; it does not have legislative authority. In spite of this, its role and significance have continued to increase since its foundation and it is the Parliament that is the closest to the citizens of the Union. The representatives are elected directly since 1979 and this made it possible for the Parliament to expand its role also in fields which the Commission or the Council is reluctant to handle. The legitimacy of the democratic election renders the representatives independent from the government of their countries, while the greatly restricted legislative capacity of the Parliament automatically reduces their political responsibility. All this taken together makes it possible for the proposals of the parliament to take the lead in the resolute solutions of delicate matters. At the same time, the Parliament is the most expressly committed advocate of the fullest possible political integration from among of the institutions of the EU.[16] This makes the prominent activity of the Parliament clear also in the field of minority protection. Since 1981, it has dealt with the rights of the minorities living within the EU with as many as four resolutions.

[13] As it happened in case of the Charter of Fundamental Rights of the European Union adopted in 2000: after lengthy debates, the section on minorities was not added to the draft either.

[14] Similarly, I do not touch upon the observations of the annual reports of the Commission regarding the minorities of the candidate States because these are much more about the minority policies of the given countries and no real unified approach can be seen in connection to them from the part of the Commission.

[15] See Toggenburg, Gabriel, *op. cit.* p. 2.

[16] See e.g. Kende, Tamás (Ed.), *op. cit.* pp. 238–252.

Besides these, it has intervened several other times with respect to cases of minorities living in third countries.

The Parliament called on the national governments and regional and local authorities in its resolution of **1981**[17] to allow and promote the teaching of regional languages and cultures in official curricula right through from nursery school to university; to grant opportunities for regional languages in the local radio and television; to ensure that individuals are allowed to use their own language in the field of public life and social affairs in their dealings with official bodies and in the courts. Moreover, the Parliament recommended that the Regional Fund should provide financial assistance for projects designed to support regional and folk cultures. Finally, it called on the Commission to review all Community legislation or practices, which discriminate against minority languages.[18]

In the so-called Afré resolution,[19] adopted on February 11, **1983**, the Parliament –'considering that some 30 million Community citizens have as their mother tongue a regional language or a little spoken language'–called on the Commission once more to take practical measures for the enhancement of opportunities for the use of minority and regional languages.

The last parliamentary resolution of the 80s concerning the minorities was the so-called Kujpers resolution of **1987**.[20] In this resolution, the Parliament–after having expressed its regrets that notwithstanding its previous recommendations no advance had been made in connection the minority and regional language use–adopted new recommendations for extension of language use in the mass media, and the cultural, economic, and social life alike. It recommended the administrative measure of officially recognizing surnames and place names expressed in a regional or minority language and it emphasized that such measures had to be taken which would '*provide for the use of the regional and minority languages in public concerns (postal service, etc.), consumer information and product labelling, and on road an other public signs and street names*' (Section 9). The Parliament added that these measures could be carried out only if an adequate provision was made for action. It recommended at least ECU 1 million to be entered in the 1988 budget for actions in favour of minority languages.

However, this was realized only according the budget appropriation adopted in 1982. (The Parliament decided in 1982 that it would mark a separate budget line for the protection of minority languages. The sum reserved for this started out with ECU 100.000 in 1982, increased continuously, and reached the ECU 4 million by the mid-90s.)

Similarly, also the so-called Stauffenberg report[21] concerning the 'Charter of the Rights of Ethnic Minorities' was prepared for the Parliament in the same period, in 1988. The

[17] *European Parliament Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities* OJ 1981 no. C 287, p. 106.

[18] Paragraphs 4–6.

[19] Resolution adopted on the basis of the draft of Gaetano Arfé, *European Parliament Resolution on Measures in Favour of Linguistic and Cultural Minorities*, OJ 1983 No. C 68, p. 106.

[20] On the basis of the draft of Willy Kujpers. *European Parliament Resolution on the Languages and Cultures of the Regional and Ethnic in the European Community,* OJ 1987 C 318, p. 160.

[21] PE 156. 208.

document took a clear stand for the necessity of a legal charter of this nature but the Parliament did not discuss the report and adopted no decision in connection to it because of the approaching elections. Nevertheless, it is interesting to note that the Stauffenberg report (which included a textual proposal of the planned Charter) expressly and consistently talked about 'ethnic groups'. It simply ignored the very likely strong aversion to group rights which is a general phenomenon and not a characteristic of Western countries only. Maybe this generous approach also contributed to the fact that the representatives did not consider the Stauffenberg report timely in any later period and they instructed the Committee on Legal Affairs of the Parliament to re-elaborate and revise the proposal. The new document, named Alber report after the successor of Stauffenberg, Siegbert Alber, was presented to the Parliament in 1993. However, the changed atmosphere is well perceivable in the fact that the Parliament did not want to launch an independent initiative in the issue and thus, it requested the opinion of the Council as well. Although this motion report the minority rights it wanted protected in a much more restrained manner, the Council has failed to included the Alber Report in its agenda up to the present day and for this reason, no decision has been made about it in the Parliament either. According to the current state of affairs, this is not going to happen in the close future either.

Nevertheless, the Parliament adopted another resolution in favour of the protection of minority and regional languages in **1994**.[22] They confirmed the principles set forth in the Afré resolution and indicated that the member States should take concrete measures at last for the protection of their linguistic minorities by creating the basic conditions for the preservation and development of these languages. As the resolution formulated it, this legal statute and the measures should at least cover '*the use and encouragement of such languages and cultures in the spheres of education, justice and public administration, the media, toponymics and other sectors of public and cultural life*' (Section 4).

The Parliament called on the member States to ratify the European Charter for Regional or Minority Languages of the Council of Europe with urgency, and the Commission and the Council to ensure that adequate budgetary provision would be made for the Community's programmes in favour of lesser used languages and their attendant cultures and propose a multiannual action programme in this field.

The resolution stressed that the recommendations set out in it applied *mutatis mutandis* to non-territorial autochthonous languages (e.g. the Roma and Sinti minorities) as well. The Parliament recommended the allocation of funds from the European Regional Development Fund (ERDF) for this purpose and requested the accommodation of the measures aiming at the protection of lesser used languages in the countries of Central and East Europe when developing EC programmes.

Beyond the above-mentioned ones, the Parliament makes mention of minorities generally in all of its resolutions and documents which are dealing with human rights[23] and

[22] Resolution adopted on the basis of the so-called Killilea Report, a *European Parliament Resolution on Linguistic Minorities in the European Community* OJ 1994 No. C 61, 110. p.

[23] See e.g. *European Parliament Resolution on Human Rights in the World in 1997 and 1998 and European Union Human Rights Policy* (§ 20–26) OJ 1999 No. C 98, p. 270.

the combat against racism[24]. The resolutions of the Parliament with respect to the situation of certain minorities living in third countries form a different group.[25]

In this respect, it is worth laying an emphasis on the fact that the minority concept of the Parliament is rather comprehensive. Despite that the Stauffenberg report aimed at the protection of traditional minorities[26] and excluded the immigrants, the ones not in possession of citizenship, and the refugees from the notion of ethnic groups, the other documents of the Parliament reveal a much wider interpretation than this. As it was declared with respect to the membership-aspiring States in the resolution on the safeguarding of human rights within the European Union, the accession of those countries was out of question, which did not respect fundamental human rights. Also, the Parliament called on the Commission and the Parliament to lay a particular stress on the (ethnic, linguistic, religious, etc.) rights of the minorities...[27]

It is another important point that the Parliament's interventions against racism and prejudice always pay special attention to the disadvantageous discrimination manifest against various minorities. The groups are interpreted in the widest sense possible (beside the traditional discrimination based on race, origin, and religion, it mentions the prohibition of discrimination on the basis of sexual orientation and social status). The Parliament has put it forward clearly in one of its pertinent resolutions that it attached great importance in this respect to '*the participation of cultural, racial, and ethnic minorities in the social and political decision-making processes*' so that the disadvantageous discrimination could be better eliminated.[28] The prohibition of discrimination and the creation of the widest-ranging effective equal opportunity are among the most important principles of the EU.

As it can be seen on the basis of the previous paragraphs, the European Parliament deals with minority protection according to two kinds of approaches, which are complementary to each other. First, its resolutions that concern specifically this matter focus primarily on linguistic minorities and offer concrete solutions. Simultaneously, the references occurring at other places show it plainly that the institution calls for the protection also of ethnic, religious, and other minorities. However, in these cases it is not clear what rights would it exactly provide for them beyond the anti-discrimination protection.

[24] E.g. *European Parliament Resolution on Racism, Xenophobia and Anti-Semitism and on Further Steps to Combat Discrimination,* OJ 1999 No. C 98, p. 488.

[25] These concern mostly the rights of minorities living in third countries, like e.g. the Resolution adopted on October 7, 1999: *European Parliament Resolution on Abuses against Roma and Other Minorities in the New Kosovo,* OJ B5-0147, 0151, 0166 and 0174/1999

[26] According to the European Council definition contained in the Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights: '…the expression ''national minority''' refers to a group of persons in a State who: a) reside on the territory of that State and are citizens thereof; b) maintain longstanding, firm and lasting ties with that state; c) display distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e).' (Article 1)

[27] Italics by the author. *European Parliament Resolution on Human Rights in the World in 1997 and 1998 and European Union Human Rights Policy* OJ 1999 No. C 98, p. 279. (Paragraph 10)

[28] OJ 1999 No. C 98, p. 488.

Further minority protection regulations within the EU

Within the EU, the circle of documents aiming at the protection of minorities encompasses more or less these resolutions of the Parliament. Mindful of the fact that the protection of minorities is not included in any of the founding documents, neither the Commission nor the Council has been in the position to take normative measures or issue minority protection decrees or directives. In spite of this, there is an opportunity–with widening the interpretation to a certain degree–for the adoption of measures applicable also for the protection of minorities in as many as three fields.

One of these possibilities is derived naturally from the financial support appropriated to the protection of the minority languages themselves. The European Parliament created the above-mentioned B3-1006 budget heading for the measures aiming at the protection of lesser used minority and regional languages back in 1982.

The amount that the Commission could spend on the co-financing (up to max. 50% of the costs) of programs safeguarding and promoting the regional and minority languages was 2.250.000 euro in 1999.[29] However, this budgetary item is subject to the discussion of the Parliament every year, which does not make the launch of multiannual programs possible. In any case, the Commission is now examining the feasibility of this and it has also been assisting the preparation of several studies, which examined the situation of minorities.[30]

Another possibility with regard to minority rights in the Union could be offered by the EU's cultural profile reinforced by the Maastricht Treaty. Article 151 (ex Article 128) of the consolidated version of the Treaty of Amsterdam emphasizes the cultural aspect of the European integration, the importance of the cultures of member States while acknowledging and highlighting the protection of regional and national diversity. According to the interpretation of some authors in connection to this, the EU has undertaken the protection of minority cultures as well (although it does not entirely meet up to this obligation).[31]

After much debate, no separate minority article was included in the Charter of Fundamental Rights adopted with a similar attitude at the Nice Summit of last year.[32] However, Article 22 of the Charter declares it in a concise manner that *'The Union shall respect cultural, religious and linguistic diversity.'* There is no need for an extremely wide interpretation to be able to apply this section also to the protection of minority rights.

The Court

Even though the measures and resolutions regarding the protection of minorities adopted by the other institutions of the EU were generally of political and not legal nature, the Court has not excluded the possibility of having the rights of minorities become part of

[29] OJ 1999 No. 125, p. 14–18.

[30] E.g. in the framework of the MERCATOR program, which co-ordinates the work of four university research institutes. In detail see e.g. *www.fa.knaw.nl/mercator*

[31] E.g. Estébanez, *op. cit.* p. 140.

[32] At the address: *http://www.europa.eu.int/comm/justice_home/unit/charte/index_en.html*

the legal principles of the Community. In the decision it brought in the Bickel/Franz case on November 24, 1998 (on the question whether the right to the use of German language in official procedures applied in protection of the local German minority are the due of foreign (but EU) nationals or not), the Court–although rejected the action–affirmed that '*naturally, the protection of such a minority can be the legitimate, just objective*' of the State. Moreover, the Court is inclined to accept the legitimacy of the protection of minorities also in the interpretation of the prohibition on discrimination.[33] All the same, these actions are far from the point where the protection of minorities could be considered one of the principles of acquis communitaire. Yet, the Court is prudent enough to be prepared to those times when this principle might appear among the legal principles of the EU as well.

Minority rights in the foreign relations of the EU

Under the pressure of the Parliament, the Council and the Commission have been making use of the EU's foreign trade policies for the promotion of human rights since the mid-80s. It was in the Lomé IV Convention of 1989 that, for the first time in the foreign relations of the Union, the protection of human rights appeared in a contractual form as a clause of the document. In this spirit, from 1995 on, all of the EU conventions refer to the Universal Declaration of Human Rights or–if the other party is an OSCE member State–to OSCE documents. Still, at the beginning of the 90s, under the influence of the ethnic rearrangements in Yugoslavia and the Soviet Union, also minority protection appeared in the foreign affairs of the EU beside human rights. The member States–twelve back then in 1991–created an arbitration committee with the mandate of analysing the legal questions emerged in consequence of the dissolution of Yugoslavia. The so-called Badinter Committee prepared a report in this framework also on its opinion with regard to minority rights.[34] Under the influence of this report and within the framework of a European political co-operation, the Foreign Ministers issued a common declaration on the principles of recognition of new States in East Europe.[35] They declared in the document, amongst other things, the recognition was made conditional upon '*guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE*'.[36] The EC thereby introduced minority protection as a new element within the spectre of conditions for the recognition of statehood. It is difficult to imagine that the member States would fail to enforce this condition in case of the recognition of other countries in the future.

Similarly, also the partnership or co-operation documents signed with Central and East European countries contain a clause on the respect for and protection of minorities.

[33] Alston, Phillip, *Human Rights and the EU*. Oxford University Press, Oxford, 1999.

[34] The Badinter commission treated the protection of minority rights as an *erga omnes* obligation, which has been the only example for this approach up to now.

[35] Bull. EC 12-1991, 119.

[36] Ibid.

The most significant undertaking of the EU–at least upon which those concerned looked with great expectations in this field–was the support for the Pact for Stability and Security in Europe (PSSE) proposed by French President Balladur. The idea of the Stability Pact which aimed at the settlement of Central and East European matters in dispute, originated from the assumption that the economic power and the political influence of the European Communities, and the promise of an occasional future membership would motivate the countries of the region to solve their border and other problems once and for all in the spirit of good neighbourliness and the protection of minorities. According to the original idea, the Central and East European States would be able to join the European integration only if the political stability necessary for the economic development was first successfully established in the region. The initiator French government believed that '*this conference would establish the framework of the preventive negotiations among the Central and Eastern-European States burdened with border and minority problems*'.[37] The goal was to have the States in concern issue bilateral agreements on good neighbourly relations, the invulnerability of borders, and the protection of minorities. For this purpose, regional round table negotiations were organized with the participation of the representatives of the States concerned. However, they did not lead to any serious breakthrough. The offered possibility of a future EU membership was very attractive but it could not become an effective instrument of political pressure on the part of the Union because it lacked any concrete preliminary assistance or accession deadline. The PSSE could hardly give any impetus to the settlement of disputes especially in the issue of the protection of minorities. Although the European Communities considered the initiative as their own and the leaders of the member countries holding the presidency one after another continued to embrace the case of the Stability Pact and travelled to the area frequently to use their personal intervention in prompting the parties to reach an agreement, the PSSE did not yield the expected results. When the representatives of the 52 OSCE member States signed the Pact at the Final Conference in Paris in 1995, the only major success was considered to be the Hungarian-Slovak Basic Treaty signed on the spot.[38] The Treaty itself was made up of not more than a declaration of general tone which was legally not binding and an annex enumerating 130 bilateral agreements most of which had been signed previously irrespective of the PSSE. As no control mechanism or sanction possibilities were placed on the agenda, the Western European countries attached importance more to the existence of the pact than to its content. Subsequent to the signing, however, not the EU but the OSCE became the depository organisation of the Pact and the EU has not directly taken part in any similar initiative since then.

Today minority rights are most markedly present in the enlargement policy of the Union. The protection of minority rights is among the accession criteria determined at the Copenhagen Summit in 1993. However, the political criteria of Copenhagen (the existence of democratic institutions, constitutionality, the protection of human and minority

[37] Quoted in Kovács, Péter, *op. cit.* p. 146. See also in: *Magyar Szemle,* September 1993.

[38] A negative light was shed on its part regarding minorities on the very same day due to the 'ultimatum' of the Slovak party on the restrictive interpretation of collective minority rights.

rights) are not part of the topics of the enlargement negotiations conducted with the candidates for membership. These can be considered such fundamental conditions without which, in theory, not even the initiation of the accession talks could be imagined. Nonetheless, as practice has revealed, if the Union found that a candidate country met the rest–economical and political–of the conditions, then it did not judge the minority protection criterion so strictly either. On the basis of the minority policy of he Union it does not seem realistic at all to exclude a candidate State exclusively because of the restricted prevalence or clearly visible deterioration of minority rights if the State has otherwise met the other criteria. Strictly speaking, probably only the frequent and serious violation of human rights could be a definite obstacle to the accession of a candidate country. From the point of view of the Union, the issue of minorities protection, as a political criterion, involves how satisfied the minorities are with their conditions in a candidate country; to what extent they endanger the political stability of the country; and to what extent the question of minority rights concerns or divides the public opinion of the country. This is well perceptible from the example of Turkey, which could become a candidate for EU membership in spite of the fact that its minority (and human rights) policy, sharply criticized earlier by the EU, failed to go through essential changes. Today, 13 countries are on the candidate list of the Union, and Turkey is among them, despite having received a most vehement criticism from the European Parliament on several occasions because of its treatment towards the Kurd minority.[39] Turkish president Ecevit explained at the Helsinki Summit of 1999–which decided also upon the candidacy of Turkey–that the government would have to defeat terrorism in his country first and the rights of minorities could come only after that. Verhaugen, EU Commissioner responsible for enlargement, answered at a written question regarding this matter that the EU was aware of the problems of the Kurds and that the Commission stressed the necessity of a civil solution in the matter. At the same time–he wrote–the basic features of a democratic system existed in Turkey and for this reason the Commission believed that Turkey could meet the Copenhagen criteria. However, he expressed that the Commission would monitor closely the implementation of political criteria in its pre-accession policy.[40]

Also, the generally arising criticism in the annual reports of the Commission in connection to the protection of minorities in other countries reveals an ambiguous picture. The situation of the Roma is the most stressed issue present in every candidate country. The reason for this can be found–beyond the everywhere present exceptional social separation of the Roma minority–in the fact that combating disadvantageous discrimination has a primary role in the human rights policy of the EU. Besides, issues concerning language rights appear often too. Nonetheless, it would be difficult to conclude a clear and well-delineated EU attitude with regard to minority rights from the analysis of the annual country reports. It is a general practice that the Commission mentions only those matters in the reports which receive great publicity anyway and are impor-

[39] Toggenburg, *op. cit.* p. 15.

[40] Recognition of Kurds as a minority and the accession of Turkey, *Written Question* E-0637/00, Official Journal 2001/C 26 E/093

tant political issues also in the given candidate country. Moreover, every candidate is measured against itself, that is, the regular praises of the Commission on the minority self-government model in the Hungarian country report does not mean that it would consider to bring up this solution in its criticism in connection to the political rights of participation in another country (e.g. Bulgaria).[41] The statements on the minority issue on the part of the Commission members or the member State governments in connection to enlargement can be interpreted with a similar political topicality.

Presumably, it is not far from the truth that the political criterion of the protection of minorities is a 'floating' condition of enlargement. The declarations of the candidate country governments and the politicians and institutions on behalf of the EU show quite different approaches towards the question. As today the notion of 'minority protection' does not have a content approved by every concerned player of enlargement, it is exactly this issue, which offers the widest political scope for action both for the Union and the governments of the candidates. The timely political changes and shifting of stress can be best reflected in the opinion formed with respect to the fulfilment of this criterion. It is enough to think of Slovakia which the EU, in its steps taken against the politics of Mečiar, chastised also because the way it treated its minorities. However, subsequent to the last change of the government the slightest positive transformations in this field have been regarded by the politicians of the EU as significant turning points.[42]

Another fact that contributes to the 'inconceivable' nature of minority protection criteria is that the acquis communitaire–as we could see–does not deal with the rights of minorities at all. And there is not even a common political intention to change this. This indicates that the member States included the political criteria established in Copenhagen in the acquis communitaire with the Treaty of Amsterdam without the clause concerning minority protection. According to this, the principles laid down in the founding treaty have to be respected by every member and candidate country alike. The fact that the minority protection clause was left out on purpose proves it clearly that they did not want to make the member States undertake such obligations in any possible form.[43] With this, they indicated to the candidate States too that minority protection was not a part of the acquis communitaire, that is, it would remain an unfathomable and intricate criterion of accession.

The question arises: On what ground can the EU evaluate as to what extent and when the candidate States' policies comply with the Copenhagen criteria in the absence of its own legal documents, institutions, procedures, and a uniform practice to assess minority protection?

The most obvious answer would be to take into consideration the existing documents of the Council of Europe and the OSCE. The Commission, without assuming or accepting any kind of obligation, could set the enforcement of minority protection instruments of

[41] For the Annual Reports see *www.europa.eu.int/comm/enlargement/index.htm*

[42] Vermeersch, Peter, *Minority Rights for the Roma and the Political Conditionality of EU Accession: the Case of Slovakia*, IEB Working Papers. KUL, Leuven, 2000.

[43] Toggenburg, *op. cit.* p. 17.

other European institutions as a standard for the candidates (who are otherwise members of the Council of Europe and the OSCE). It is a fact that the Commission consults the High Commissioner on National Minorities of the OSCE on a regular basis on the situation of the minorities in the candidate countries. However, there is no indication beyond this of the willingness of the EU to consider minority rights included in the already existing European international documents.

Furthermore, as it was shown above, the principles included in other European international conventions do not serve as a common denominator among the member States either. This renders difficult for example the situation of the politicians of the country performing the duty of the EU presidency when it comes to the simultaneous representation of the EU's and their own country's (perchance contradictory) position in front of the rest of the world.

The rights of minorities are manifest not only in the Copenhagen criterion. It is important to observe that questions greatly affecting the rights living circumstances of minorities (e.g. education, the establishment of decentralised administration, regional assistance, etc.) have appeared in numerous subject matters of accession negotiations. These issues can constitute the theme of political bargaining between the EU and the governments of the candidate States only. The consideration of exemptions, the gradual adoption of certain part of the acquis communitaire, and the indication of the areas dependent on assistance belong to the exclusive sphere of authority of the bargain of the two parties. However, the representatives of the minorities cannot be present at the bilateral negotiations and their interests are (should be) represented by the government of the given country. It has emerged in the Union that also the minorities of the candidates should be involved in some form in these issues, or at least their opinion should be found out so that the governments could not 'play' the EU accession against their minorities. Yet, no decision has been brought about how and when this should be done. As the accession negotiations are in a very advanced state in case of e.g. Slovenia, Malta, and Hungary and so far no co-ordinated consultations have been held with the minorities on any subject matter, this cannot be accepted to happen with regard to major issues.

Looking at the EU's activity in its entirety, the minority policy of the Union appears to be inconsistent. The lack of political will for the internal regulation of minority rights questions the credibility of the EU's foreign politics. What we be regard as progress, is the fact that the demand for a unified minority policy for the Union has been formulated at several fora.

It is a fact that the minorities within the EU can influence their own situation through various channels but in particular cases they can do this directly as well: e.g. the well-developed regional and decentralization mechanisms of the EU can effectively help the conservation of the identity of the ethnic minority groups living together in the same area. Similarly, well-rooted democratic traditions allow for the resolution of minority-related disputes in the absence of external pressure (see e.g. the establishment of the Scottish or the Welsh Parliaments in Great Britain). Naturally, this does not mean that there is no need for comprehensive regulation of minority rights within the Union. In any case, the

above-mentioned examples can explain why there is no general demand and great political pressure present within the member States to deal with the issue also on the level of the Union.

The EU is presented with a real challenge in the field of traditional minority protection in the eastward enlargement of the Union. The minority issue, given the considerable minority population, often has a prominent role in the politics of the Central and East European countries that want to join the EU. As we could see, this is not ignored by the Union. Nonetheless, the formation of a unified EU policy is not easy in this case either. The legal instruments are completely lacking for this and also the political ones fail to give a unified view. All the same, it seems inevitable for the EU to face the issue of minority rights very seriously–and not only with political eventuality–in the long run in the course of enlargement. It will be difficult to bring about political stability, indispensable for economic integration, if this is missing.

Further reading

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