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Edited by:
Andrássy György, Jyrki Käkönen and Nagy Noémi

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Contents

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Double Standard in a Peripheral Policy of the European Union: the Issue of Minority Protection[1]

Abstract

This paper contributes to the issue of centre vs. peripheries in Europe by pointing out the ambivalent role of minority protection in the external vs. internal development of EU law. It demonstrates that the minority protection clause of the Copenhagen accession criteria served the foreign policy interests of the EU and not that of the political and legal harmonization of the integration process. Therefore it could not become a general, long-term objective and in the enlarged Union, the issue of minority rights is peripheralized the same way as before. The utmost purpose of the author is to find the reason of this selective minority protection. Furthermore, she demonstrates some theoretical arguments for and against the *raison d'etre* of double standards, traces the historical roots of the double standard tradition in Europe, and seeks to find the legal bases for a coherent, consistent and strategic EU minority policy.

Keywords: Copenhagen criteria, double standards, minority protection, language rights

1. Introduction

It is a generally accepted view in academic circles that „the role of minority protection within the European Union context poses a paradox" (Schwellnus 2001:1). On the one hand, it has become one of the most important elements of the Union's external relations after the end of the Cold War: it was included in the guidelines for the recognition of new states after the break-up of Yugoslavia[2], the Europe Agreements with Central and Eastern European Countries between 1991 and 1995, the political accession criteria spelled out at the Copenhagen European Council in 1993, and the founding document of the Stability Pact for South Eastern Europe[3]. „On the other hand, minority rights played hardly a role in the internal development of the *acquis communautaire*." (Schwellnus 2001:1). As *de Witte* ironically put it, concern for minorities seems to be „primarily an export article and not one for domestic

[1] Research presented in this paper was supported by the Research Institute for Linguistics, Hungarian Academy of Sciences.

[2] Resolution of December 16, 1991: Guidelines for the recognition of new states in Eastern Europe and the Soviet Union. Resolution of December 17, 1991: Common position for the recognition of the Yugoslav Republics.

[3] Cologne, June 10, 1999.

consumption"[4]. This study examines the phenomenon of double standard in the EU's minority policy only in the light of the Copenhagen criteria. It also addresses the reasons of the development of double standard, its origins and the possible ways of solution.

2. The place of minority protection in European Union law

The conditions of accession to the European Union were established in the Copenhagen European Council in 1993: „Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and *respect for and protection of minorities*"[5] (emphasis added). This rule meant in practice that acceding states had to demonstrate, under strict scrutiny, that respect for and protection of minorities – such as the education of minority languages, use of minority languages with public authorities, on public signs, in judicial proceedings and access to media in minority languages – is appropriately guaranteed (Mouthaan 2007).

The Copenhagen Presidency Conclusions were incorporated in Article 6 (1) of the EU Treaty *via* the Amsterdam Treaty in 1997: „The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." Article 49 sets out that any European state which respects these principles may apply to become a member of the Union. (In 1992 the Maastricht Treaty only prescribed that the conditions of admission shall be the subject of an agreement between the Member States and the applicant state.)

Strikingly, the article listing the core values of the Union does not make any reference to the rights of minorities, though it constituted an integral part of the Copenhagen political criteria. *Hughes* and *Sasse* concludes that since the EU Treaty is legally binding, and Article 49 expressly requires that the candidate countries comply with the conditions of Article 6 (1), therefore the EU has abandoned the minority protection provision from the conditionality for membership; it had only rhetorical prominance in the enlargement process (Hughes and Sasse 2003:10-11). We cannot agree with this opinion since the requirement for the protection of minorities have been included in each accession partnerships.[6] According to

[4] De Witte, Bruno: Politics versus Law in the EU's Approach to Ethnic Minorities, EUI working paper, RSC No. 2000/4, p. 3. Cited by Toggenburg 2000:15.

[5] Presidency Conclusions, Copenhagen European Council, 21-22 June 1993. par. 7/A. iii)

[6] *See* for example, the Council Decision of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Republic of Hungary (98/259/EC). OJ L 121. 23.4.1998. pp. 1-5.

Hoffmeister, in turn, Article 6 (1) of the EU Treaty could be interpreted widely, so as to encompass the protection of minorities under the heading of "human rights" (Hoffmeister 2004:88). Nevertheless, this view does not seem acceptable either, since if it had been so evident among EU legislators that human rights include minority rights, it would have been unnecessary to formulate a separate requirement for the protection of minorities in Copenhagen.

The author holds that only the principles expressly stated in the EU Treaty – namely respect for democracy, the rule of law and human rights – apply to the Member States themeselves, therefore these are recognized fundamental values of the European Union's internal development and for the purpose of its enlargement as well. In turn, minority protection is mentioned only in the latter context: the EU requires the candidate countries to protect their minorites without committing itself and its members to the rights of minorities in any legally binding document.[7]

However, the issue of minority protection did not pass out of the EU agenda in 1997. During the preparatory work of the Draft Charter of Fundamental Rights, there were about a dozen submissions strongly urging for a separate minority clause to be included in the document. The most optimistic ones – such as the Committee of Regions or the NGO "Society for Threatened People International" – claimed the granting of collective minority rights (Schwellnus 2001:7-10). Finally, the Union legislators failed to insert a minority article to the Charter of Fundamental Rights. The document contains only a general rule prohibiting discrimination based, among others, on ethnic origin and membership of a national minority (*see* Article 21).

In comparison, the Constitution of the EU, though it did not enter into force, is an important step forward: it elevated – mainly as a result of the insistence of the Hungarian government, and despite the initial opposition of some delegations (Vizi 2005:89-90) – the rights of persons belonging to minorities to the status of fundamental value of the Union. The Lisbon Treaty took this part of the EU Constitution without change, so in December 1, 2009, the word "minority" appeared in the EU's primarily law the first time in the history of the European integration: „The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minorities*." (Article 2, emphasis added). This shift in legal terminology (i.e. from the "respect for and protection of minorities" to "the rights of persons belonging to minorities") suggests a conceptual change in European policy thinking: the first formula embodies a group rights approach, while the latter one is an individualistic, human rights orientated conception of minority protection.

[7] Naturally, it does not mean that the particular EU member states separately did not ratify some instruments on minority rights.

Therefore – despite the latest positive developments which prove the willingness of the EU to make progress in the area of minority protection – there is still a much higher standard of norm compliance set for the new candidates than the EU had ever been able to agree for its own member states (Hughes and Sasse 2003:8-9).

3. Arguments against the existence of double standards

In case of a serious and persistent breach by a member state of principles mentioned in Article 6 (1), Article 7 makes it possible to suspend certain rights deriving from the EU Treaty to the member state in question. However, since the minority clause did not apply to the member states of the EU, they could violate minority rights without any consequences concerning their membership. (Non)compliance of the minority protection requirements as the "price" of the accession to the European Union in the given historical situation functioned as a penalty only for the newly democratized states of East-Central Europe.

According to some authors, this uneven system is lawful, since international law does not contain the duty of formal reciprocity which would prevent states from imposing rules on other states that they do not follow themselves (Toggenburg 2000:18). This view, in its simplistic form, is rather disputable, furthermore, we have to judge this question not on the basis of sovereign equality of the states, on the contrary: by laying down certain criteria, the EU enforces its power dominance.[8]

Even if we reject this opinion, there is still another objection: What if the EU did not demand the fulfillment of these criteria from their current member states, because they had already satisfied them? What if in the 90s, the principle of minority protection was so self-evident, well established and universally recognized among current member states that to have it inserted into the EU Treaty „would have been very much like re-affirming the law of gravitation"?[9] Even if we suppose that the "old" member states did meet these criteria – which is not the case in every instance, as we are going to see it later –, it is easy to see that the matter of double standards is not only about pragmatics, but also about ideas. The concept of double standards in this context simply means that someone requires something from others that he does not require from himself. Without an explicit demand, he can act according to his own discretion, excluding any possibility of external control. We can make sure

[8] It is similar to the situation when we say that the peace agreements are drawn up by the victors. It is not a question of reciprocity problem: self-evidently, the parties in position of power dictate the terms. Of course, this does not mean that this situation is correct from moral or legal point of view – this is exactly what I want to prove in this paper.

[9] As *Pittman* assumes it regarding the implementation of the famous self-incrimination principle in the medieval English legal practice. *See* Pittman 1935.

of him meeting the criteria now, but there is no guarantee that he will also meet the criteria later. Furthermore, it is well-known that the declarations and theories of natural rights and human rights formulates exactly these self-evident and indisputable truths (let us just think of the American Declaration of Independence), even though these truths are far from being self-evident and indisputable in their details (Andrássy 2009: 447).

4. The roots of double standards in Europe

The phenomenon of double standards does not only exist in the minority policy of the EU. It is generally true that the West measures the East by different standards.[10] Where does this discrimination originate from?

According to one view, it comes from the era of the emergence of nation states. The literature devoted to nationalism usually opposes two conceptions of the nation:

> The first type is presented as the result of the free association of citizens and as a rational and voluntary political construction. This civic, contractual, elective nation is the basis of the French idea of the nation, conceptualized by the philosophers of the Enlightenment and realized by the Great Revolution. In contrast, the second type is seen as the concretization of a historical community, the expression of an identity feeling, the reflection of a natural order. This cultural, organic, ascriptive nation is the basis of the German idea of the nation, nurtured by romanticism and embodied by the Second and the Third Reich. (Dieckhoff 2005:62)

[10] The issue has several current implications. For instance, the Chairman of the Washington State Network for Human Rights talked about double standards in connection with the scandal of the IMF: "Even though it has become clear that the Western domination and the American era are approaching their end, yet the West continues to pursue double standards… The reason for this phenomenon is that the global institutions built under the Western domination were built on the principles of inequality, discrimination, and double standards. The inequality, discrimination, and double standards are based upon race, color, national origin, and economic status." Singh, Sawraj: Western Double Standards Continue But for How Long. The Link Newspaper, 12 June 2011 (http://thelinkpaper.ca/?p=7388). At the 19 January 2011 plenary session of the European Parliament, after the speech of the Hungarian Prime Minister Viktor Orbán presenting the programme of the Hungarian EU Presidency, there was a heated debate on the new Hungarian Media Act. During the debate, several MPs talked about double standards. (*See* http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20110119&secondRef=ITEM-005&language=EN) The titles of the articles on the debate are meaningful. *See* for example, Common Values, Different Standards. The Beginner, 25 January 2011. (http://www.thebeginner.eu/europe/all-in-european-union/418-common-values-different-standards), or: The EU's Hungary headache – and a whiff of double standards. The Guardian, 20 January 2011. (http://www.guardian.co.uk/commentisfree/2011/jan/20/ hungary-eu-media-law)

The concepts of cultural nation (Kulturnation) and political nation (Staatsnation) was first used by the German historian Friedrich *Meinecke*.[11] This distinction was later applied by the German-born American political scientist, Hans *Kohn*, who – by his famous 1944 book, "The Idea of Nationalism" – has greatly contributed to the promotion of the dichotomy. Kohn, however, "reformed" the theory and declared Eastern ethnic nation states to be malignant, and Western, civic nation states to be benign. According to him, Eastern nation states tend to be more xenophobic, illiberal and aggressive, in contrast, minority situations in the West are considered unthreatening because Western nationalisms are color-blind (Kohn 1967).

It is easy to see that the Kohn dichotomy is very schematic, and cannot be applied without reservations even in the case of the "prototypes", i.e. France and Germany. The division is not supported by adequate empirical evidence, it is problematic both from conceptual and sociological point of view, and politically biased. Nevertheless, it has deeply penetrated the Western thinking; therefore, it perfectly explains the ideological background of the application of double standards.[12]

In the view of other authors, the division of Europe leads back to even much earlier, to the years of the Renaissance:

> When the centre of Europe was in the South, the backward and dangerous periphery was naturally in the North. Then, from the years of the Renaissance to the age of the Enlightenment, Europe's centers of culture and finance had slowly shifted from the treasuries of Rome, Florence, and Venice to the now more dynamically important cities of Paris, London, and Amsterdam. After that, the main conceptual dividing line in Europe was the one between the 'developed West' and the 'backward East'. The mental iron curtain descended to Europe two centuries before NATO, and the Warsaw Pact brought the real iron to the same dividing line. (Jutila 2009:633)

Now it is not surprising any more that the legacy of the double standards tradition can also be found after World War I. That time the victorious great powers created and imposed certain standards on several countries (among the defeated and the enlarged states) concerning the protection of their minorities. These standards were based on the text of the Polish Treaty of 1919 and included to the so called minorities treaties which the Allied Powers also signed, but without undertaking to apply these obligations regarding their own minorities. This „moral inequality" was, of course, in sharp contrast with the principle of equality of sovereign states and played a great role in the inefficiency of the League of Nations (Andrássy 2011:7-8). After World War II, the successor of the League of Nations, the United

[11] *See* Meinecke, Friedrich 1970. *Cosmopolitanism and the National State*. Princeton: Princeton University. The English translation of the original German version published in 1908.

[12] On how peripheries are socially constructed, *see* Tõnis Saarts in this volume 21–38.

Nations' Organization simply postponed the settlement of the issue of minorities. It neither acknowledged the legal validity of the minorities treaties concluded after World War I, nor set any new standards in place of them. Finally, the rights of persons belonging to minorities have been recognised within the international human rights regime.

5. The reasons of applying double standards in the European Union

After tracing the roots of double standards in the history of Europe, let us now examine the possible reasons of why this tradition could survive in the minority policy of the European Union.

First, we might assume that the earlier member states of the EU, being established democracies, could provide helpful advice to the new democracies of Eastern Europe „to bring the region in line with what it promoted as 'European' norms and standards for minority protections." (EU Reporter 2009). But who can decide whether the minority policy of a certain European country is acceptable or not? The answer should be: the OSCE High Commissioner on National Minorities (hereafter: HCNM). The position of the HCNM was created in 1992 to contain and de-escalate tensions involving national minority issues. The High Commissioner is entitled to act even in states which have not ratified legally binding treaties and even when it is unclear whether a certain group of people can be regarded as a minority or not.[13] However, while in theory the entire European region should be open for analysis, in reality, on general issues such as the linguistic rights of national minorities when specific countries are targeted, all the recommendations of the HCNM are from Eastern Europe (Johns 2003:687-690). In comparison, when the possibility of the High Commissioner's intervention in the West initially raised, France[14], Greece and the United States simply declared that there were no national minorities living in their territory. Great-Britain, Turkey and Spain subsequently insisted that the HCNM could not intervene where terrorism was involved, thus taking the Irish, Kurdish and Basque questions off the international agenda (Smith 2003:5).

Furthermore, the European Union does not have a coherent and uniform minority protection policy, or such a language policy tightly connected to minority

[13] The disturbance is indicated by the statement of the first HCNM, Max van der *Stoel*: „the existence of a minority is a question of fact and not of definition… I would dare to say that I know a minority when I see one." Keynote Address 1993.

[14] France had already declared this in the League of Nations Council when the United States President Woodrow Wilson proposed a general minority article. According to the French representative, „to find minorities in France, they would have to be created in imagination." Cited by Alexanderson 1997:48.

issues. Nor can we find the traces of such a policy in the practice of the European Court of Justice. In the sphere of minority rights, lacking an acquis of its own, the EU has to rely on standards elaborated in the legal instruments within international human rights law, namely, documents developed under the auspices of the OSCE, the Council of Europe and the United Nations. Perhaps the most relevant standards regarding minority rights are the European Charter for Regional or Minority Languages (ECRML; 1992/98) and the Framework Convention for the Protection of National Minorities (FCPNM; 1995/98) (Smith 2003:4). However, some „old" European states (such as France or Belgium) are still refraining, though for different reasons, from signing or ratifying even these documents. In fact, the only common and consistent policy regarding minorities in the EU is a broad commitment to certain human rights, such as the principle of non-discrimination (Johnson 2006:28).

These facts all query the justification of the EU's "civilizing mission" and the meaning of bringing Central and Eastern European countries in line with Western Europe; i.e. actually there is no such line to be brought in. Therefore, the first argument cannot justify and cannot be the real reason of applying double standards.

Secondly, we could assume that the reason of selective minority protection is that "minority rights are violated only in the 'East', and only there can inter-ethnic relations turn violent" (Jutila 2009:629). This argument cannot be justified either, since many minority situations in the West can be marked by violence. Let us just think of the Basques in Spain and France or the Irish in the United Kingdom, and their terrorist organizations, the ETA and the IRA. The problem of discrimination against the Roma is not treated more successfully in the West as in East-Central Europe, either. This is so even if the Roma issue is the hobby-horse of the European Commission which has reprehended the candidate states several times.[15] The reason of applying double standards in minority protection in Europe thus should be found somewhere else.

Let us examine a third possible explanation, namely the issue of national/continental security, and the fear of the West from the „aggressive hyper-nationalism" of the post-communist Eastern European countries. Security problems (and the securitization of the minority issue) are deeply rooted in European politics (Wallace

[15] On the monitoring mechanism of the European Commission, *see* Sasse 2004. Sasse (pp. 66-67) notes that "although most of the ten CEE candidate countries have significant minority populations, only two minority groups are consistently stressed in the Regular Reports: the Russophone minority in Estonia and Latvia, and the Roma minorities of Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia… This 'hierarchy' of minority issues reflects the EU's interest in good relations with its most powerful neighbor and energy supplier Russia and its own soft security concerns regarding migration."

and Wallace 1996: Chapters 14, 16 and 17). According to *Alexanderson*, „as a result of Nazi Germany's use of minority rights as a pretext for agression, they had fallen into disfavour by the 1940s, and minorities were widely viewed as a «menace to peace»" (Alexanderson 1997:49). After World War II, the Great Powers wanted to prevent the rebound of Germany: this was one of the reasons of the establishment of the European Coal and Steel Community, the Euroatom, and later the European Economic Community. Article 237 of the EEC Treaty stated that the possibility of accession is open to any European countries. Although the article did not expressly mention but it was clear that the membership is not unconditional but also presupposes the adaptation of the principles, values and goals represented by the Community. Those aspirant countries which could not meet these so-called implicit accession criteria could not, in principle, become full members of the EC. However, the candidate countries of the second wave of the enlargement presented safety risks for Europe: Not long before the opening of the accession negotiations, Greece had been controlled by a military junta, Spain had been under the fascist dictatorship of Franco, while Portugal had been under that of Salazar. Although these countries were not yet able to meet human rights standards, it was safer to keep them "inside Europe", "close to the fire".

Nevertheless, the transformation of the international situation since the late 1980s was qualitatively different from the marginal changes of the previous thirty years (Wallace and Wallace 1996:443). As „the superpower confrontation that characterized the Cold War era practices… began to fade away", and „the bipolar balance of power had been replaced by multipolar instability" (Jutila 2009:637), aggressive nationalism in one country presented a threat to the whole continent. In the great power vacuum emerged after the collapse of the Sovet Union, there was a serious danger that the long-suppressed national grievances and majority-minority conflicts would come to the surface. This conviction – i.e. the relationship between the fragile European peace and threatening nationalism and minority concerns – was first officially represented in the summit document of the Copenhagen Meeting of the Conference on Human Dimension of the CSCE[16], and in the Charter of Paris for a New Europe, both delivered in 1990, but it frequently appeared in different Council of Europe documents[17], too. However, in the earliest documents

[16] According to Article 30, "respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy…" Cited by Schwellnus 2001:4.

[17] *See* for example: Recommendation 1134 of the Parliamentary Assembly of the Council of Europe on the rights of minorities (1 October 1990), Article 4: "Respect for the rights of minorities and persons belonging to them is an essential factor for peace, justice, stability and democracy." http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta90/EREC1134.htm

of both organizations, there was no clear reference as regards *why* minority issues are dangerous. It was in 1993 – since the situation in former Yugoslavia turned more and more serious – when "aggressive nationalism" was first condemned.[18] (Jutila 2009:639-642).

In order to save – or rather reestablish – the European status quo, it was essential to prevent the escalation of ethnic conflicts, which goal seemed to be achieveable by a double strategy. First of all, it was necessary to satisfy minority demands in a spectacular way which, however, would entail few obligations. This objective was served by adopting some long-delayed documents related to minority protection: the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the ECRML, and the FCPNM. Secondly, the West saw a good opportunity in making greater demands by the EU on Eastern and Central European countries as to the area of minority protection.

To the question as to why the EU did not deal with the issue of minority protection before, some authors simply answer that since the second World War there was not such a political turmoil as in the 90s' Yugoslavia. The 1995 enlargement – according to them – was irrelevant, since Austria, Finland and Sweden were stable defenders while the former socialist states were systematic violators of human rights (González del Pino 2008:16-17,23). Furthermore, the East-Central European enlargement process with twelve candidate countries was not only bigger than ever, but the accession of ten post-socialist states was involved. By this time it was worthwhile to lay down explicit conditions for accession, moreover, by the annexation of the former communist bloc, the EU – shining in the light of the great unifier of the continent – has become an important actor in the international political arena (González del Pino 2008:16-17,23).

6. Prospects for a coherent EU minority policy

From the foregoing it is obvious that the minority protection clause of the Copenhagen accession criteria served the foreign policy interests of the EU and not that of the political and legal harmonization of the integration process. Therefore it could not become a general, long-term objective and in the enlarged Union, the issue of minority rights is peripheralized the same way as before (Vizi 2003:7). In the following I will briefly review those areas of EU law which might serve as

[18] *See* the Vienna Declaration of the Council of Europe: "This Europe is a source of immense hope which must in no event be destroyed by territorial ambitions, the resurgence of aggressive nationalism, the perpetuation of spheres of influence, intolerance or totalitarian ideologies. We condemn all such aberrations."; and the Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism of the Rome meeting of the CSCE.

normative bases for the legal framework of a coherent EU minority policy without double standards.[19]

One of the possible ways is connected to the dimension of *cultural diversity* which is a modest, yet well-established EU policy. It was already stated in the 1948 Hague Conference that any European cooperation should be based on the respect for cultural diversity (Shuibhne 2002:119). Following a lot of important antecedents, Article 128 of the Maastricht Treaty set out that the Community "shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity" and „shall take cultural aspects into account in its action under other provisions of this Treaty".[20] Article 22 of the Charter of Fundamental Rights confirms this commitment: "The Union shall respect cultural, religious and linguistic diversity".

Within the dimension of cultural diversity, the *protection of minority languages* deserves special attention for two sets of considerations:

> Firstly, from a human rights perspective, minority languages are inextricably linked to the communities that speak these languages. To safeguard the rights of linguistic minority communities it is necessary to protect and preserve native languages… Secondly, from a cultural policy perspective, language is part of the cultural identity of a community and helps to understand its history and values. (Mouthaan 2007)

However, the EU has so far dealt almost exclusively with the institution of official language, sometimes at the expense of minority languages. This language policy, in practice, resulted in that the position of some major languages has strengthened, while that of endangered languages has further weakened. It is important to underlie that this is not an isolated problem of certain countries, since there are approximately 60 regional and minority languages in Europe and, apart from Iceland and some micro states, at least one of them is spoken in every European countries, i.e. in all EU member states. Approximately 55 million people in Europe speak a minority language which is more than 10% of the population.[21]

However, at present the EU does not have explicit competence in the field of protection of linguistic minorities. General minority issues are covered by the human rights-based *non-discrimination* framework of Article 13 EC[22] which enables

[19] For a similar grouping of the possible connection points of the EU minority policy *see* de Witte 2004.

[20] The Amsterdam Treaty renumbered (Article 151) and supplemented the text with the following: „in particular in order to respect and to promote the diversity of its cultures". Now it is Article 167 (section 1 and 4) of the Treaty on the Functioning of the European Union.

[21] Official data of the Mercator Centre (European Research Centre on Multilingualism and Language Learning) http://www.mercator-research.eu/minority-languages/facts-figures

[22] Now it is Article 19 of the Treaty on the Functioning of the European Union.

the Community to „take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." This general clause on the prohibition of discrimination could supplement but cannot replace the special minority protection regulations. *Wiener* and *Schwellnus* summarize the reasons as follows: „First, non-discrimination is a general human rights principle", i.e. applicable to all persons,

> whereas special minority rights are groupspecific, i.e. targeted at particular persons or groups… Secondly, while non-discrimination aims at the removal of all obstacles to the enjoyment of equal rights and full integration of persons belonging to minorities into society, special minority protection requires permanent positive state action in support of the minority group, in order to preserve its identity and prevent assimilation… Thirdly, non-discrimination is mostly viewed as an individual human right. By contrast, the question whether special minority rights should be conceptualised as individual or collective rights, i.e. as rights granted to persons belonging to minorities or rights granted to the groups as such in the form of self-government, autonomy or self-determination, remains highly contested. (Wiener and Antje 2004:8-9)

A third possible connection point between minority protection and the EU acquis is the *combat against racism and xhenophobia* which issue has been a high priority on the Community level as well as in the Member States since the rise of far right parties in the mid-80s (Schwellnus 2001:21). The 1999 communication of the Commission set out that „the rejection of racism, xenophobia and anti-Semitism is an integral element of these [minority] rights... The concept of respect for and protection of minorities constitutes a key element of combating racism and xenophobia in the candidate countries."[23] The most important means in combating racism and xenophobia are the so-called Race Equality Directive[24] based on the general non-discrimination framework of Article 13 of the EC Treaty, and the European Monitoring Centre on Racism and Xenophobia established in 1997 which was converted into the European Union Agency for Fundamental Rights[25] in 2003.

As we can see, the issue of minority protection is closely related to the internal law of the European Union in several ways, but the mystery of which path will be chosen by the EU legislators yet remains. It is also possible that the European Court of Justice will create the foundations of a coherent EU minority policy.[26] During

[23] Communication from the Commission: Countering Racism, Xenophobia and Anti-Semitism in the Candidate Countries. COM(1999)256 final; 26 May 1999. 2f. Cited by Schwellnus 2001:21-22.

[24] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 pp. 22-26.

[25] http://www.fra.europa.eu/fraWebsite/home/home_en.htm

[26] The Court was the driver of the evolution of EU law especially in the area of basic human rights: Article 6 (2) of the EU Treaty actually codified the existing interpretation set out by the Court. *See* Schwellnus 2001:16-17.

this work, it is essential for the EU to work in co-operation with other international actors – mainly with the Council of Europe and the OSCE.

7. Final conclusions

The aim of this study was to demonstrate the existence of a double standard in the minority protection policy of the European Union, and to explore its historical background and real causes. Among the final conclusions, the author may stress that she disapproves the practice of the EU minority policy built on double standards. Practically all nation-buildings are based on a certain culture and/or language. For example, the institution of official language conceptually creates disadvantage to those people who do not speak the official language.[27] Therefore, minority issues must be addressed in every state. It is a rather unfair and misleading point of view to consider some countries as „the usual suspects of minority rights violations" and others as „not guilty a priori" (Jutila 2009:644). The treatment of minority issue in the European Union should reflect a coherent, consistent, comprihensive and strategic approach. Respect for minority rights should be based on the Kymlickian concept of fundamental justice. „A comprehensive theory of justice in a multicultural state (and in the multicultral EU – N. N.) will include both universal rights, assigned to individuals regardless of group membership, and group-differentiated rights or «special status» for minority cultures." (Kymlicka 1995:6). It is necessary to desecuritize minority issue, to cease the treatment of minority question as a security problem and to elevate it to the normal political discourses, and to get rid of the long-standing stereotypes of the false East-West dichotomy of the nation state. We can welcome as a promising start of a long process that since the Lisbon Treaty the minorities have been officially recognised values of the Union. This gesture expresses the common commitment of the member states to the protection of minority cultures and identity, but we need more – we need specific, normative rules – in order to say: in the minority policy of the EU, the age of double standard is over.

[27] On the institution of official language and other forms of language institutionalization, *see* György Andrássy in this volume 139–157.

References

Alexanderson, Martin 1997. The Need for a Generalised Application of the Minorities Regime in Europe. *Helsinki Monitor* 4: 47-58.

Andrássy, György 2009. Nyelvszabadság: egy elismerésre váró emberi jog. *Jogtudományi Közlöny* 11: 445-456. (Freedom of Language: A Universal Human Right to be Recognised.)

Andrássy, György 2011. Recognizing Language Rights: A Long and Intricate Progress towards Justice. In: *Essays of Faculty of Law University of Pécs Yearbook of 2011*, Pécs: University of Pécs. 9-24.

De Witte, Bruno 2004. The Constitutional Resources for an EU Minority Protection Policy. In: Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged Union: The Way Forward*. Budapest: Open Society Institute. 107-124.

Dieckhoff, Alain 2005. Beyond Conventional Wisdom: Cultural and Political Nationalism Revisited. In: Dieckhoff, Alain and Jaffrelot, Christophe (eds.), *Revisiting Nationalism: Theories and Processes.* London: C. Hurst & Co. 62–77.

EU Inaction on Minority Rights. EU Reporter, 18 September 2009. http://www.eureporter.co.uk/story/eu-inaction-minority-rights (11.08.2011).

González del Pino, Silvia 2008. Los Derechos Humanos como criterio de acceso a la Unión Europea. *Criterio Jurídico* 8: 9-34.

Hoffmeister, Frank 2004. Monitoring Minority Rights in the Enlarged European Union. In: Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged Union: The Way Forward*. Budapest: Open Society Institute. 85-106.

Hughes, James and Sasse, Gwendolyn 2003. Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs. *Journal on Ethnopolitics and Minority Issues in Europe* 1: 1-37.

Johns, Michael 2003. „Do As I Say, Not As I Do": The European Union, Eastern Europe and Minority Rights. *East European Politics and Societies* 4: 682-699.

Johnson, Carter 2006. The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe. *International Journal on Minority and Group Rights* 1: 27-52.

Jutila, Matti 2009. Taming Eastern Nationalism: Tracing the Ideational Background of Double Standards of Post-Cold War Minority Protection. *European Journal of International Relations* 15: 627-651.

Keynote Address of Mr. Max van der Stoel CSCE High Commissioner on National Minorities at the CSCE Human Dimension Seminar on „Case Studies on National Minority Issues: Positive Results". Warsaw, 24 May 1993. http://www.osce.org/hcnm/38038 (11.08.2011).

Kohn, Hans 1967. *The Idea of Nationalism: A Study in its Origins and Bacground*. New York: Macmillan.

Kymlicka, Will 1995. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clanderon Press.

Mouthaan, Solange 2007. The EU and Minority Languages: Missed Opportunities and Double Standards. *Web JCLI* 5. http://webjcli.ncl.ac.uk/2007/issue5/mouthaan5.html (11.08.2011).

Pittman, Carter 1935: *The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America*. http://www.rcarterpittman.org/essays/Bill_of_Rights/Privilege_Against_Self-Incrimination.html (11.08.2011).

Sasse, Gwendolyn 2004. Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality? In: Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged Union: The Way Forward*. Budapest: Open Society Institute. 59-84.

Schwellnus, Guido 2001. „Much ado about nothing?" Minority Protection and the EU Charter of Fundamental Rights. *ConWeb* 5: 1-30.

Shuibhne, Niamh Nic 2002. *EC Law and Minority Language Policy. Culture, Citizenship and Fundamental Rights*. The Hague/London/New York: Kluwer Law International.

Smith, David J. 2003. Minority Rights, Multiculturalism and EU Enlargement: the Case of Estonia. *Journal on Ethnopolitics and Minority Issues in Europe* 1: 1-40.

Toggenburg, Gabriel 2000. A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities. *European Integration Online Papers* 16. http://eiop.or.at/eiop/texte/2000-016.htm#12 (11.08.2011).

Vizi, Balázs 2003. *Az Európai Unió keleti bővítése és a kisebbségek védelme*. www.hunsor.se/dosszie/euboviteseskisebbsegvedelme.pdf (11.08.2011).

Vizi, Balázs 2005. The Unintended Legal Backlash of Enlargement? The Inclusion of Rights of Minorities in the EU Constitution. *Regio* 87-108.

Wallace, Helen and Wallace, William 1996. *Policy-Making in the European Union*. Oxford: Oxford University Press.

Wiener, Antje and Schwellnus, Guido 2004. Contested Norms in the Process of EU Enlargement: Non-discrimination and Minority Rights. *ConWeb* 2: 1-39.