

NEW CHALLENGES FOR THE TRADITIONAL MINORITIES IN EUROPE

contribution of MEP CSABA TABAJDI (HUNGARY)

*President of the Intergroup for Traditional National Minorities,
Constitutional Regions, and Regional Languages*

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1, Developments after 1989

I participated at the congress of FUEV in 1990, in Munich, where I outlined the contemporary problems of the minorities in Central and Eastern Europe. Preparing to today's presentation, I have reread my contribution, to see the changes of the world since then. I tell you this, because fighting for minority rights could resemble us sometime to the famous Don Quijote, fighting against the windmills. Heroic fight with no or only minor results. But we should not forget how far we got in the last 16 years, since 1990. Nobody thought back in Munich, that we will have two legally binding Council of Europe documents (the Framework Convention and the Charter), what most Council of Europe member states have ratified. Minority rights became part of the Copenhagen criteria for the accession of Central and Eastern European countries, largely contributing to the improvement of the minority policies of these states. Nobody foresaw

No doubt, there are many things to be done. There are still no comprehensive standards concerning minority rights and minority protection mechanisms and monitoring. We must work to revive the EU's Constitutional Treaty and to complete the ratification process, in order to have a legal basis for the elaboration of legal standards and protection mechanism for minorities on the EU level.

I asked a question here back in 1990, whether the so called West had realized and acknowledged the importance of the question of minorities, the implications of the minority problems to the security and prosperity of the whole continent. This question is still relevant today. Although

some developments have taken place, but many countries in Western Europe - especially France - has failed to fundamentally reform their reserved approach to the minority issues. This is the main obstacle that stands in the way of elaborating a legally binding minority protection mechanism on the EU level.

Further to that, the main principles that we had discussed in 1990 are still valid. The passive minority protection logic is insufficient, we need an active approach, positive discrimination/affirmative action. We also need to guarantee the collective rights of the minorities, not only the individual rights. We should not have the illusions, that economic development and welfare in themselves solve all minority problems, as the examples in Belgium show us.

We must differentiate between the traditional national or autochthonous minorities and the new, immigrant minorities. Both groups need a legal protection and regulation on the European level, but should be treated separately, for their problems largely differ.

- There are **visible conflicts** stemming from minority tensions, **some of them armed** (most notably Chechnya). These conflict include the Basque Country, Corsica, Cyprus, Northern Ireland, the Kurds in Turkey, Transdnistria, Kosovo, etc. Wherever there are still no armed conflict, it **could erupt any time** (e.g. in the Western Balkans).

- There are **no clear norms and standards** concerning minority rights and protection in Europe. Individual and collective rights are not clarified. The *acquis communautaire* does not contain any specific regulation on minority protection either. If the European Constitution will be adopted, the reference of the rights of people belonging to minorities would constitute a sound basis for elaborating a comprehensive minority protection system within the EU.

- **Leading European countries** such as France or Greece **do not acknowledge the existence of minorities** as such, and refused to ratify the two legally binding instruments of the Council of Europe.

- The problem of **double standards** is a serious one. The old Member States required much more from the new Member States and candidate

countries, with which they actually comply. This is the case with the Framework Convention and the European Charter for Regional or Minority languages.

- Many in Europe **underestimate the importance** of the question of minorities. They give **simplified answers**, especially in the case of new minorities. Mr. Tony Blair speaks about fighting against terrorism in vain (hiába), if there are no answers for the integration of the new minorities. It is crucial to have a **new integration policy in Europe**.

- The **paradox** is that the **successful minorities are** those, who were **radical and fought armed** for their cause. The only exception may be the Swedish speaking Finns, since even in South-Tyrol there were incidents before granting the autonomy (destruction of energy cables, and bridges). Europe has always appreciated more and awarded those minorities, which has stepped up violently.

2. Does the European Union have a minority policy?

It is not easy to find a clear answer. Yes and no. This is like the debate was about the gender of angels in the middle ages. The Copenhagen European Council defined the political criterion that all applicants must meet before they could join the European Union. Namely, among other things, they must respect and protect minorities. This is a soft law and it is clear that there are no minority rights standards which would have been integral part of the *acquis*. Therefore, we welcome the text of the Constitutional Treaty, which provides for the criteria of respect for human rights including the 'rights of persons belonging to minority groups'. This is the first legally binding reference on the minority rights in the history of the European Union. This is a real historical turning point.

On the level of the Member States, there are several regulations regarding minority rights and there are some very positive examples: the protection of Swedish speaking minority in Finland, or the most progressive example of territorial autonomy in Southern Tyrol in Italy. Or the most efficient language law in the whole Europe, the Welsh language act in the United Kingdom, which stopped the linguistic assimilation. It led to a very rare phenomenon, namely, a real renaissance of the use of the Welsh language.

Despite the fact that there are no Community standards in the EU, the Union was very consistent for monitoring the situation of national minorities in the applicant countries. The regular reports prepared about the situation of minority rights in the 10 new countries reflected this contradiction. The criticism formulated by the EU was lacking a clear set of criteria.

3. Despite the lack of coherent Community minority policy, the logic of EU's development has contributed to a more and more minority-friendly policy framework in the EU through various indirect instruments, such as cross-border co-operation, regionalisation, the carrying out of the principle of subsidiarity, non-discrimination and the fight against any kind of discrimination. The developments of the Euro-regions are establishing more and more favourable conditions for the preservation of the identity of national minorities.

4. The enlargement of the EU by the 10 new Member States brings a challenge to the minority policy too. The EU will find itself in a "mouse-trap situation", because the accession criteria formulated in Copenhagen in 1993, as well as the monitoring process of the enlargement remains obligatory for the Member States. This means that the Member States may not ignore these level of requirements, but should respect them. In the new Member States the minority issues are of a greater relevance. It is still a big question, what will be the effects of the enlargement on the minority rights in the EU of 25. In this field we can observe an awkward situation: double standards. If I compare the minority rights in the 10 and the 15, I certainly come to the conclusion that the level of the direct protection of the rights of minorities in the new Member States is higher than in the EU-15. To a large extent, it is a consequence of the Copenhagen criteria and the monitoring process.

What will be the future of the minority rights in the enlarged EU? The new Member States will decrease the level of the protection of minority rights - which scenario should be avoided - or the old Member States will adjust their current regime to that of the new countries? We must preserve our achievement not because of the EU, but because of our internal stability of good neighbourhood and of good regional cooperation.

Let me emphasise that the minority protection is more or less

satisfyingly handled and approached in all the EU-10. In none of these countries is any danger of conflicts, especially not interstate conflicts because of minority disputes. This does not mean that minority issues are solved for ever, as these have to be addressed continuously and in a developing way.

We, the EU-10 do not have internal or bilateral, interstate conflicts which would be unmanageable, such as the Northern Ireland crisis, or the extremism in Bask land or Corsica. It is very important that our partners be aware that we will not bring any minority crises into the EU, which we were unable to handle.

5. It is greatly to be feared that the extension of the notion of the Non-discrimination Directive would have a detrimental impact on the special protection of minorities. If citizens of other countries belonging to the same language community can use the special minority linguistic regime, it can lead to the fact that the states will be much more reserved to give special minority rights. This is a real danger after two decision of the European Court. There is no clear distinction between discrimination and positive discrimination. This problem emerged in the case of the Hungarian 'Status Law' as well.

6. Based on the principle of subsidiarity, the minority groups should be given a right to handle the issues arising in connection with their special status. In a number of countries, some minorities are deeply convinced that only large scale autonomy schemes, including territorial autonomy, would best suit their needs. In other countries still some basic rights are at stake, for example the assignment of minority rights to citizenship, or the right to citizenship at all.

7. We should avoid any kind of illusions after the enlargement. There is some kind expectations towards the "EU-internationalism", whether the EU itself will solve the minority problems. Earlier, during the communist regimes, the so-called "proletarian internationalism" was unable to solve automatically the minority problems. The "liberal internationalism" proved to be equally ill-fated. Therefore, we should not wait for any kind of EU automatism in the improvement of the protection of minority rights.

8. The EU has to continue the efforts to monitor the situation of national

minorities in the Member States. Who will do that? There is no structure for this in the architecture of the EU. The Parliament? The Commission? I think the European Parliament has to be much more active in the monitoring of minority rights in the 25 Member States.

For this purpose, we should find a clearer allocation of competences in the Committees. The Foreign Affairs Committee should deal with the monitoring of the situation of national minorities outside the EU, while the Committee of the Citizens' Rights should monitor the situation inside the EU.

Enhanced cooperation may be extended to this field too. Finland, Austria, Italy or Slovenia could play a leading role in this co-operation. These countries have the best practices in the Continent and they can be examples for the other states.

We should consider the establishment of a Committee of Minorities, as a *mutatis mutandis* for the Committee of the Regions.

Future tasks:

9. Ensuring the possibility for minorities with an **additional protocol to the European Human Rights Convention** to be able to turn to the European Court of Human Rights;

10. Linking the **European Union with the Council of Europe - better co-operation** in order to avoid the wasteful parallelisms: the Council of Europe has two legally binding instruments for the protection of minorities and minority or regional languages: the **Framework Convention** for the Protection of National Minorities and the **European Charter** for Regional or Minority Languages. Both have an effective control mechanism. The Council of Europe also has a **human rights ombudsman**, not specifically for minority rights, but the ombudsman can also deal with them.