

NATIONAL MINORITIES IN THE LAW OF THE EC/EU

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Abstract. *In the law of the EC/EU the protection of national minorities is still a marginal matter. The EU has relied on general international law and on a European regional system of international law and, in case of necessity, accepted their norms. But in the 1990s there began a process of “de-economisation of the European integration” and the importance of national minorities became higher. Protection of the national minorities has not become a generally accepted legally binding principle of the EU, although in several legal acts issues of national minorities are mentioned. On the other hand, the political relevance of national minorities’ protection is very high. The importance of protection of national minorities in the future will probably grow. It is a result of the adoption of the Charter of Fundamental Rights of the EU (2000) and of the discussions regarding the European constitution and the Treaty of Lisbon.*

Keywords: *national minorities, EU law, European Charter of Human Rights*

1. Introduction

The Law of the European Communities (or European Union) is a special branch of law which formed until the end of 1960s.¹ Unlike international law, several of its legal norms are applicable directly. They need no transformation on a national level. Addressees of this law are not only states but also individuals. The jurisdiction of the European Court is much larger than in the case of classical international tribunals and it is often obligatory.²

When the original three European Community Treaties were signed in 1950s,

they contained no provisions concerning the protection of human rights.³ The integration process has primarily been an economic project -despite the fact that it always had political aspects⁴ and the Schuman declaration dealt more with political vision than with the economy.⁵ Probably, the emphasis on economic integration provided in the 1950s a camouflage for the great integristic visions of Jean Monnet, Robert Schuman and Konrad Adenauer in order to obtain public support.⁶

Therefore the direct role of the European Union in the area of protection of national minorities is still very limited (likewise the

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¹ Köck, Heribert Franz: *Rechtsfragen an der Jahrtausendwende, Akten des 22. Österreichischen Völkerrechtstages*, Linde Verlag, Wien, 1998: Fischer, Peter: „Die Einheit des Europarechts als dogmatisches und didaktisches Problem.“, p.55.

² Fischer, Peter, Köck, Heribert, Franz: *Völkerrecht*, Linde Verlag, Wien, 2004, p.47.

³ Craig, Paul, Búrca, Gráinne de: *The EU Law (text, cases and materials)*, Oxford University Press, Oxford, 2003, p.317.

⁴ Weatherill, Stephen, Beaumont, Paul: *EU Law*, Penguin Books, London, 1999, pp. 32-33.

⁵ Declaration of 9 May 1950, http://europa.eu/abc/symbols/9-may/decl_en.htm.

⁶ Craig, Paul, Búrca, Gráinne de: *The EU Law (text, cases and materials)*, Oxford University Press, Oxford, 2003, p.8.

general protection of human rights). The EU has relied on general international law and on a European regional system of international law and, in case of necessity, accepted their norms.⁷

But in the 1990s there began a process of "de-economisation of the European integration". At the same time, the importance of national minorities increased also on a national level. Some states (Greece, France) for political and nationalist-historical reasons, had for a long time denied that they even had any minorities. Only in recent years did this attitude change: for example, France for a long time did not regard Article 27 of the International Pact on Civic and Political Rights as applicable in France.⁸ This was not, of course, a manifestation of adversity towards national minorities. It was a result of the revolutionary republican tradition of equality and unity eliminating any form of segregation of citizens into ethnic or other communities.⁹

The fact that the EC is not a classic international organisation but a supranational one¹⁰ implies that within the European integration framework it is more difficult to resort to watered down solutions which stand somewhere in between political and quasi-

legal instruments. In contrast to traditional international organisations, and apart from the requirement that every single EC act needs to be founded on a particular article in the EC Treaty (due to the so-called principle of conferred powers), EC law also defines the legal forms and effects of the acts which may be adopted on the basis of an eventually introduced provision in Primary law (Treaties).¹¹ Therefore some states may reject the authority of the European Court and other EC/EU institutions to adopt a decision in the case of the national minorities' agenda, as not having a basis in the provisions of Treaties.¹² This is expressed also in the principle of subsidiarity, according to which the EC/EU can act only in areas that member states have entrusted it.¹³

The reality is that the question of national minorities was for many years out of the authority of the EC/EU. Until the Amsterdam Treaty (signed on 2 October 1997 and entering into force on 1 May 1999), there had not been a single treaty provision dealing with the protection of minorities (apart from some indications in the Accession Treaties of the UK and Austria, Sweden, Finland, Norway) in the Primary Law of the EC/EU.¹⁴

⁷ From this point of view the most important was the Article 6/2 of the Treaty on the EU (....2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.), See further: Lang, 2001, Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.243.

⁸ Blumenwitz, Dieter, Gornog, Gilbert: Der Schutz von Minderheiten und Volksgruppenrechten durch die Europäischen Union, Verlag Wissenschaft und Politik, Bonn, 1996, p.26.

⁹ Matscher, Franz : Wiener Internationale Begegnung zu aktuellen Fragen nationaler Minderheiten, N.P.Engel Verlag, Kehl, Strassburg, 1997 (col.of papers): Leuprecht, Peter: "Minority Protection in Europe-Problems and Prospects", p.9.

¹⁰ It is not easy to describe the EU and EC by terms of traditional international and constitutional laws. See: Craig, Paul, Búrca, Gráinne de: The Evolution of EU Law (collection of papers), Oxford University Press, Oxford, 1999: Curtin, Deirdre M., Dekker, Ige F.: "The EU as a "Layered International Organization: Institutional Unity in Disguise", pp.83-136.

¹¹ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, 2000, p.1.

¹² The authority of the Court is restricted only on duties resulting from the Treaty (see Articles 226-228 of the Treaty).

¹³ Fischer, Peter, Köck, Heribert, Franz, Karollus, Margit Maria: Europarecht, Linde Verlag, Wien, 2002, p.470

¹⁴ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for

On the other hand, many provisions and measures of the EC/EU also have some indirect effects on the position of national minorities. This is especially the case when some part of the national minorities' agenda is relevant to the implementation of the fundamental principles of the EU. But activities of the EC/EU relating to minorities have been rather scarce until now.

However, in connection with the Treaty Establishing the Constitution for the European Union (although not ratified) and European Charter of Human Rights, the law of the EU is also increasingly dealing now with matters of national minority rights.

In a very general sense, even such principles of the European law as the free movement of persons, inherently contain some elements of national minority rights' protection (equal treatment as a fundamental principle).

Nevertheless, we should not regard the entire process of raising the importance of protection of national minorities as a one-way process, i.e. granting more and more rights to national minorities. For example, several provisions present in various national laws in favour of national minorities were considered to be against European law.¹⁵

2. Human rights in the Law of the EU/EC

Human rights, including the protection of national minorities- as mentioned above- were for a long time outside the scope of the EEC, EC, European Union etc. (This means all those organizations that dealt with the European economic integration).¹⁶ These institutions relied on the Council of Europe and OSCE for the human rights agenda¹⁷, and also on the constitutional mechanism of protection at the level of member states.¹⁸ The EEC, Euratom and ECSC defined themselves originally as almost entirely economic organizations:¹⁹

“Although the Treaty of Rome of 1957 sought to establish specific freedoms of an economic nature, such as the free movement of workers, no general reference to human or fundamental rights was made in the Treaty (*in its original version, D.S.*)”²⁰

Until the 1990s there was no direct obligation in the norms of the EU/EC stipulating the respect of rights of national minorities.²¹

As soon as political cooperation in the European Communities was strengthened, ground had to be identified for cooperation on a human rights agenda and on defining basic

(its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, 2000, p.2.

¹⁵ Judgements of the European Court of Justice in the cases *Bickel v. Franz* (C-274/96 [1998] ECR, I-7637) decided on 25th November .1998. About regional provisions aiming at the protection of the German minority living in the Autonomous Province of Bozen (South Tyrol in Northern Italy).

¹⁶ Tichý, Luboš, Rainer Arnold, Svoboda, Pavel, Zemánek, Jiří, Král, Richard: *Evropské právo, (European Law)*, C.H. Beck, Praha, 1999, p.693.

¹⁷ Alston Philip: *The EU and Human Rights*, Oxford University Press, New York, 1999, p.v.

¹⁸ Tichý, Luboš, Rainer Arnold, Svoboda, Pavel, Zemánek, Jiří, Král, Richard: *Evropské právo, (European Law)*, C.H. Beck, Praha, 1999, p.693.

¹⁹ Pan, Franz: *Der Minderheitenschutz im Neuen Europa and seine historische Entwicklung*, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien,1999, p.101.

²⁰ Janis, Mark, Kay, Richard, Bradley, Anthony: *European Human rights Law*, Oxford University Press. New York, 2000, p.504.

²¹ Blumenwitz, Dieter, Gornog, Gilbert: *Der Schutz von Minderheiten und Volksgruppenrechten duch die Europäischen Union*, Verlag Wissenschaft und Politik, Bonn, 1996, p.11.

standards. Cooperation in the area of justice and home affairs is impossible without a common framework in the protection of human rights.²² The importance of the human rights and also of the national minorities' agendas in the EU can only increase.²³ The principle of equal treatment played a crucial role in including human rights aspects in the law of the EC/EU.²⁴ The antidiscrimination law opened a door in EC/EU law for the human rights agenda.²⁵

Some experts divide the history of the EU/EC with respect to the national minorities' agenda in two periods²⁶:

1) the period during which the national minorities' agenda was essentially ignored ("blindness as regards national minorities")

2) the period after May 1st, 1999 when the Amsterdam Treaty came into force²⁷.

But this milestone is for guiding purposes only because this change was actually a process and changes in legislation are only the formal signs of the change.

The first institution of the European Community/Union operating with a notion of

fundamental rights²⁸ was the European Court of Justice.²⁹ It took its definition of human rights for Community purposes from common, international sources, mostly from the European Convention on Human Rights, which in 1974 was ratified by all Community states.³⁰ The Court of Justice over the years has declared that "general principles of EC law" include protection of fundamental rights which are part of the common constitutional tradition of Member states, including international human rights treaties.³¹

On the other hand, the development of the human rights agenda inside the EC has not been solely the work of the European Court of Justice. In 1977 (on April 5th), the European Parliament, Commission and Council adopted a joint declaration which stressed the importance of fundamental rights, derived in particular from national constitutions and the European Convention on Human Rights.³²

After 1979 several members of the European Parliament tried to draw attention to the minority agenda. For example, in 1979/80, MP Franz Ludwig Graf Stauffenberg wanted

²² Craig, Paul, Búrca, Gráinne de: *The Evolution of EU Law* (collection of papers), Oxford University Press, Oxford, 1999; Curtin, Deirdre M., Dekker, Ige F.: "The EU as a "Layered International Organization: Institutional Unity in Disguise", p.126

²³ Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrgs., Wien, 2001, Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.239.

²⁴ Craig, Paul, Búrca, Gráinne de: *The Evolution of EU Law* (collection of papers), Oxford University Press, Oxford, 1999; More, Gillian: „The Principle of Equal Treatment: From Market Unifier to fundamental Right?“, pp.531-533.

²⁵ Craig, Paul, Búrca, Gráinne de: *The EU Law* (text, cases and materials), Oxford University Press, Oxford, 2003, p.355 and 389.

²⁶ Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrgs., Wien, 2001, Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.239.

²⁷ The Article 13 incorporated by the Amsterdam Treaty authorized the Council to „...to fight against discrimination based on gender, racial or ethnic origin, religion, disability, age or sexual orientation.“

²⁸ A term close to "human rights".

²⁹ Klučka, Ján, Mazák, Ján a kol.: *Základy európskeho práva, (Introduction to European law)* IURA EDITION, Bratislava, 2004, p.241.

³⁰ Janis, Mark, Kay, Richard, Bradley, Anthony: *European Human rights Law*, Oxford University Press. New York, 2000, p.504.

³¹ Craig, Paul, Búrca, Gráinne de: *The EU Law* (text, cases and materials), Oxford University Press, Oxford, 2003, p.317.

³² Janis, Mark, Kay, Richard, Bradley, Anthony: *European Human rights Law*, Oxford University Press. New York, 2000, p.506.

to draft a proposal for a charter of rights of national minorities.³³ His initiative was refused, because at the same time, a similar attempt was underway at the Council of Europe.³⁴ In the 1980s, the agenda of national minorities was under the competence of the Committee for Culture.³⁵ MP Graf Stauffenberg in 1988 put forward a draft of a new document (Charter of Rights of Ethnic Groups in Member-states of the European Communities).³⁶ None of these initiatives were very successful.

The minority agenda acquired significant importance only as part of the external relations of the EC/EU,³⁷ involving negotiations with third or candidate countries.

The importance of having a serious "national minority policy" resulted therefore from European activities in the area of foreign relations and security policy. The attempts to solve the conflicts in Yugoslavia created pressure even on "domestic" EU policy to clearly define "minority rights".³⁸

The first time the human rights agenda was mentioned in a fundamental (and legally binding) document was in the 1992 in the Maastricht Convention and its amendments. (currently art. 12, 13, 136, 141 of the Treaty on establishing EC and art. 6 and 7, 29, 49 of Treaty on EU- See Appendix XVII. and XVIII.)

Article 12 of the **Treaty Establishing the European Community** deals with the prohibition of discrimination based on state citizenship: "Within the scope of application of

this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.[...]"³⁹

Article 13 provides the right of the Council to adopt measures to fight against discrimination based on gender, racial or ethnic origin, religion, disability, age or sexual orientation: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."⁴⁰

In a very general sense, from both these articles we can deduce the principle of equality of all citizens of the EU, regardless of their individual characteristics, including racial and ethnic origin. Article 13, together with several acts of the secondary law of the EC, are basic norms of EC protection of national minorities.⁴¹ Article 136 expresses the obligation of the Communities to respect the European Social Charter: "The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment,

³³ Pan, Franz: *Der Minderheitenschutz im Neuen Europa and seine historische Entwicklung*, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien, 1999, p.102.

³⁴ *Ibid.*, p.102.

³⁵ *Ibid.*, p. 102.

³⁶ *Ibid.*, p.103.

³⁷ Blumenwitz, Dieter, Gornog, Gilbert: *Der Schutz von Minderheiten und Volksgruppenrechten durch die Europäischen Union*, Verlag Wissenschaft und Politik, Bonn, 1996, p.28.

³⁸ *Ibid.*, p.12.

³⁹ Article 12, Treaty on establishing EC.

⁴⁰ Article 13, Treaty on establishing EC.

⁴¹ Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrsg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.253.

improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Community and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy.

They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.⁴²

This article does not deal with national minorities directly, but social matters concern even the life of national minorities. Several national minorities or groups of immigrants live in different conditions than the majority of the population. Therefore the request for a minimal standard of material equality is legitimate.

Article 141 stipulated equality between men and women (at least in pay for work):

“1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this article, «pay» means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

b) that pay for work at time rates shall be the same for the same job.

3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value [...].⁴³

Again, those above-mentioned articles do not concern the minorities' agenda directly, but they introduced at least the question of human rights into the law of the EU/EC. Nobody can claim that the EC/EU is only an economic organization or that it is or should be only a free-trade zone.

The elimination of the human rights aspects (including, at least partially, the national minorities agenda) from the scope of EU/EC activities would mean a return to the level of the 1970s in the process of European integration. However, as soon as the process of economic and other forms of integration begins, the relations between states become increasingly tighter, and sooner or later the states also have to proceed to integration in the other areas.

Article 151 speaks about cultural values. It obliged the Community to:

“[...] contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.” [Art. 151(1)]

⁴² Article 136, Treaty on establishing EC.

⁴³ Article 141, Treaty on establishing EC.

This means to contribute even to the development of the cultures of national minorities. The Community shall support [Art.151(2)]:

1) improvement of the knowledge and dissemination of the culture and history of the European peoples,

2) conservation and safeguarding of cultural heritage of European significance,

3) non-commercial cultural exchanges,

4) artistic and literary creation, including in the audiovisual sector.

According to Art. 151(4), the Community is also obliged:

"[...] to take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures".⁴⁴

In the **Treaty on the EU** only three articles are directly related to human rights: (6, 7 and 49, see Appendix XVIII).

Article 6 commits the EU to respect human rights, fundamental freedoms and fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Convention in this way definitely became a part of the EC/EU - law.

"Article 6

1. 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.

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to

the Member States, as general principles of Community law.

3. The Union shall respect the national identities of its Member States.

4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies."⁴⁵

In practice, by means of this article the EU definitively adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms within the law of the EU/EC.

Article 7 presents the procedure that must be applied in case the main principles and objectives (including human rights and freedoms) are at risk.

In the case of breach of the principles of Article 6(1) the Council may:

1) address appropriate recommendations to that State [Art.7(1)]

2) suspend certain of the rights deriving from this Treaty to the member State (including the voting rights of the representative of the government of that Member State in the Council [Art.7(2)].

The initiator of this process may be the Commission or the European Parliament, but the decision-making body is the European Council.⁴⁶

In this article, rights of national minorities are not mentioned directly, but the following Article (49) speaks about the obligation of potential members to respect human rights (including basic respect for the rights of national minorities). Only the European states that respect the principles of human rights may become members of the EU.⁴⁷

Article 29 deals with cooperation in criminal matters and with the struggle against racism and xenophobia⁴⁸, obligations which

⁴⁴ Art.151, Treaty on establishing EC.

⁴⁵ Article 6, Treaty on the EU.

⁴⁶ Article 7, Treaty on the EU.

⁴⁷ Article 49, Treaty on the EU.

⁴⁸ Article 29, Treaty on the EU.

also have some relevance to the national minorities' agenda.

No regulation of the primary legislation deals with the rights of national minorities directly. But the fundamental principles can be deduced from the provisions about the struggle against discrimination, racism and xenophobia, and from provisions about accepting the standards of the Council of the Europe as basic principles of the human rights oriented policy of the EU.⁴⁹ They form an important basis for the equal treatment of members of national minorities. (Most states understand racism in a more general sense, as discrimination is based not only on race in a strict anthropological meaning but also on ethnic origin, language, religion etc.⁵⁰) There is an obligation for the EU to promote the rights

and status of the people who are "others" in an ethnic sense. It opens a door for claims by ethnic minorities for recognition at the European level. If the EU intervention in the issue of gender equality was very successful, the case of ethnic, racial and national minorities is much more complicated.⁵¹ The methods of "positive discrimination" may be used by individual member states, but only if they are not forbidden by the EC- and EU-laws (a ban on discrimination).⁵²

The human rights agenda in the law of the EU subsumes different groups of norms. We could speak of four groups. (In case of group III, we may suspect that they do not really belong to the law of the EU). But those pillars must be distinguished from the pillars of the Treaty of Maastricht:

I.	II.	III.	IV.
Community law	International law	Constitutional law of individual states (If reference is made to them in acts of the communities and the Union)	External agreements of the EU

In group I we can identify:

- 1) Primary law:
Treaty Establishing the EC,
Treaty on the EU
- 2) Secondary law:
Directives, regulations, etc (mostly in the area of free movement, acceptance of diplomas, social security, etc.)
- 3) Practice of the Court of Justice:
This is a system developed from basic principles.

4) "Soft law"
Resolutions, recommendations, opinions (not binding).

- 5) Sui generis acts:
Communitarian Charter of Fundamental Social rights of Employees (1989),
Charter of the Fundamental Rights of the EU (2000)

And in group II.
The European Social Charter (1961),
The European Convention on Protection

⁴⁹ Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrsg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.253.

⁵⁰ Alston Philip: *The EU and Human Rights*, Oxford University Press, New York, 1999: Conor A Gearty: "The Internal and External Other in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe", p.336.

⁵¹ *Ibid.*, p.349.

⁵² Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrsg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.254.

of Human Rights and Fundamental freedoms (1950)

3. Secondary law of the EC and EU

From secondary law, the most important act is **Directive No. 2000/43 EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.**⁵³ This Directive of the Commission is based on Article 13 of the Treaty⁵⁴ and is relevant also to the protection of national minorities.⁵⁵ It defines not only direct and indirect discrimination on the grounds of racial or ethnic origin, but also harassment. The Directive refers not only to national laws, regulations or administrative practice, but also to any provision contained in individual or collective contracts, agreements, and internal rules of undertakings or non-profit associations (Article 14). In this document the EU rejects theories which attempt to determine the existence of separate human races. Following the Preamble, the use of the term “racial origin” in this Directive does not imply an acceptance of such theories (Preamble 7). Maybe this is too courageous a statement. It presents a political solution to a problem of anthropology and genetics. We may doubt that it is a real solution.

Regardless of problems concerning exact definitions, discrimination based on racial or ethnic origin (Preamble 9) is defined as an obstacle to the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social

cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

This directive has forbidden any form of direct or indirect discrimination based on racial or ethnic origin (Article 2).

A direct discrimination is defined as a situation, when “one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin” [Article 2(2)(a)].

An indirect discrimination is a situation when “[...] an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” [Article 2(2)(b)].

The Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to conditions for employment and self-employment, access to all forms of training, working conditions, organisations of employees, social protection, education, access to goods and services etc. (Article 3) However it is not applied to the situation of persons with citizenship of third (non-EU) countries. But this directive accepted positive discrimination (positive action, Article 5). The standard laid down by this directive is a minimal standard (Article 6). Measures taken by states can be more favourable for individual persons.

⁵³ Unofficially called the “Race directive”.

⁵⁴ Lang, Peter: *Minderheitenschutz in Mittel und Osteuropa*, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrsg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.241.

⁵⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, see OJ No. L 180, 19.07.2000, pp. 22-26 and Toggenburg, Gabriel: *A Rough Orientation Through a Delicate Relationship: The European Union’s Endeavours for (its) Minorities*, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, pp.23-24.

By this Directive Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them [Article 7(1)].

Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive [Article 7(2)].

The burden of proof is put on the respondent to a person who considers himself wronged because the principle of equal treatment has not been applied (Article 8)-although many legal experts may consider this provision wrong [(Article 8(1)]. Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint (Article 9). States shall encourage dialogue between social partners and with non-governmental organisations in the area of struggle against discrimination (Article 11 and 12). Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin [Article 13(1)]. Any laws, regulations and administrative provisions, provisions of contract, internal rules of undertakings, rules governing profit-

making or non-profit-making associations etc., which are contrary to the principle of equal treatment, are abolished (Article 14).

We are again able to notice that national minority rights consist of three main aspects:

1) protection against discrimination for individuals belonging to the national (racial, religious, ethnic) minority.

2) some form of special rights which the rest of the population does not have (mainly because they as the majority do not need them).

3) some form of special treatment and positive discrimination in the area of education, training, access to work opportunities, special social support programs etc.⁵⁶

For existing European law the most important is the first aspect. The principle of equality and non-discrimination are fundamental principles of the EU. The "fathers" of European integration were fully aware the level of the hate, exclusion and xenophobia existing in European society.⁵⁷ This xenophobia was oriented not only against citizens of other (member) states but also against "traditional" minorities and later also immigrants in the first place immigrants with different colour of skin and different cultural habits (Muslims, Hindus etc.).

The third aspect shall support the elimination of discrimination in social life and providing access to work opportunities in the first aspect. Special rights which support cultural life of persons of different racial or ethnic origin are, still from the point of view of present EU law, a less important matter.

But it is interesting that this "Race Directive" omitted references to religious discrimination - often closely related to discrimination on a racial or ethnic basis.⁵⁸

⁵⁶ This last one aspect is not always accepted by everybody.

⁵⁷ Alston Philip: *The EU and Human Rights*, Oxford University Press, New York, 1999: Conor A Gearty: „The Internal and External Other in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe“, p.327.

⁵⁸ See: Boris Tsilevich: *EU Enlargement and the Protection of National Minorities: Opportunities, Myths, and Prospects*, <http://www.eumap.org/journal/features/2001/oct/euenlarge>.

However, in specific situations we can define the religious specific characteristic of some community as its cultural features forming a distinct ethnic group. Probably there is no religious minority which in reality would have only religious specificities. Any religious minority usually has its own specificities in cultural and material life. And therefore, this could also be applied to religious minorities without direct reference.

In practical policy, the measures which have been taken by the EU/EC can be divided into four groups⁵⁹:

1) measures of a **mainly political character**, developed by the European Parliament and characterised by a normative approach;

2) measures undertaken by the European Commission, the Council (and the Parliament), characterised by a functional, i.e. **financial approach**;

3) measures taken within the framework of the EC/EU's **foreign relations**, which differ from the already-mentioned two groups as they are not directed at the internal sphere of the EU (which does not, however, mean that they could not also have internal implications);

4) **policies and programme-type** measures (not treated here), which are **not minority oriented**, but which still are relevant to minority issues. These include areas such as human rights policy, anti-racism policy, asylum policy, refugee policy, the attitude towards third-State nationals, the role of the regions in the EU, etc.

4. The European Court of Justice

The system of the law of the EU is to some extent similar to Anglo-Saxon common law and decisions of the Court of Justice play an important role in it.

The Court does not pay significant attention to the problems of national minorities. They are a matter of concern only if they have some relevance to fundamental principles set in the Primary Law.

For example, the cases *Bickel/ Franz* (25.11.1998)⁶⁰ and *Angonese* (06.06.2000)⁶¹ regarded regional provisions aiming at the protection of the German minority living in the Autonomous Province of Bozen (South Tyrol in Northern Italy). The Court declared that linguistic restraints in this province were against community law.⁶² Mr. Bickel and Mr. Franz were Germans from Germany and Austria who demanded to have criminal proceedings conducted against them in German, as the trial was held in South Tyrol where the German language has the same position as Italian. The Italian Government contended that the only nationals upon whom the right in question is conferred are those who are both residents of the Province of Bolzano and members of its German-speaking community, the aim of the rules in question being to recognise the ethnic and cultural identity of persons belonging to the protected minority. Accordingly, the right of that protected minority to the use of its own language need not be extended to nationals of

⁵⁹ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, pp. 1-3.

⁶⁰ The judgement in this case C-274/96 was issued on 24 November 1998 (see under <http://www.curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>).

⁶¹ The judgement in this case C-281/98 was issued on 6 June 2000 (see under <http://www.curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>).

⁶² Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.2 and C-274/96.

other Member States who are present, occasionally and temporarily, in that region.

The Court in its judgement declared that such a position would favour nationals of the host State (the Germanspeaking community in South Tyrol) by comparison with nationals (German-speaking) of other Member States in exercising their right to freedom of movement, and would therefore run counter to the principle of non-discrimination laid down in Article 6 of the Treaty:

“[...] the protection of such a minority may constitute a legitimate aim. It does not appear, however, from the documents before the Court that that aim would be undermined if the rules in issue were extended to cover German-speaking nationals of other Member States exercising their right to freedom of movement.” (line 29 of the Judgement)

The Angonese case dealt with an Italian resident in South Tyrol who studied in Austria and therefore did not possess a required certificate in order to prove he was bilingual. Thus, he was denied participation in a work competition. The Court later declared it as a contradiction with the Article 39 of the Treaty:

“Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.”⁶³

5. Sui generis acts and “Soft” law of the EU

Beside the rules existing in the EU-law, there are many documents which are not

strictly legally binding, but nevertheless create a political and moral “atmosphere” in which the policy of the EU is performed.

The most important role in this matter was played by the European Parliament.

Probably the first documents concerning the national minorities' agenda was The European Parliament's **Resolution on a Community Charter of Regional Languages and Cultures** and on a **Charter of Rights of Ethnic Minorities** (16th October, 1981).⁶⁴ This Resolution requested national, regional and local authorities to allow and promote the instruction of regional languages and cultures in official curricula from nursery school up to university level; to allow and to ensure sufficient access to local radio and television; and 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 (paragraph 1).⁶⁵

This Resolution demanded, furthermore, that regional funds should provide assistance for projects designed to support regional and folk cultures and regional economic projects (paragraphs 4 and 6). Finally, the Parliament called on the Commission to review all Community legislation or practices which discriminate against minority languages (paragraph 5).

In 1983, the Parliament passed a **Resolution on Measures in Favour of Linguistic and Cultural Minorities** [11 February 1983 (OJ 1983 No. C 68, p. 103)]⁶⁶. The Parliament underlined the importance of the above-mentioned resolution of 1981, and again called upon the Commission to continue and intensify its efforts in this area.

Another one of the first documents

⁶³http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=698J0281#SM.

⁶⁴ OJ 1981 No. C 287, p. 106.

⁶⁵ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.4.

⁶⁶ Ibid., p.4.

dealing with the rights or status of ethnically different people was a **Joint Declaration against Racism and Xenophobia** issued by the European Parliament, the Council and Commission (1986, O.J. C158/1).⁶⁷

The **Resolution on the Languages and Cultures of the Regional and Ethnic in the European Community** [the so-called *Kujpers Resolution*, 30 October 1987, (OJ 1987 No. C 318, p. 160).] was adopted by the Parliament in 1987 as a result of a lack of progress in this matter.⁶⁸ In this Resolution the Parliament provided different recommendations to the Member States in the field of education, the mass media, cultural infrastructure and economic and social life, as well as in the field of State administration and jurisdiction.

Furthermore, the Parliament recommended:

1) to provide a direct legal basis for the use of regional and minority languages, in the first instance in the local authorities of areas where a minority group does exist,

2) to review national provisions and practices that discriminate against minority languages',

3) to use also national, regional and minority languages in decentralised and central government services in the areas concerned.

4) to recognise surnames and place names expressed in a regional or minority language.

5) to provide consumer information and

product labelling in regional and minority languages.

6) to use regional languages for road and other public signs and street names.

A new attempt to draw the attention of the European parliament to the problems of national minorities was the initiative of the MP Siegbert Alber in 1993 (a draft of the Charter of ethnic groups). His initiative was unsuccessful because of the coming elections in 1994 and the substantial progress in the Council of Europe as regards the protection of national minorities, which put his initiative in question.⁶⁹

In 1994, the Parliament adopted a **Resolution on Linguistic Minorities in the European Community**⁷⁰ on the basis of the so-called 'Killilea report', which again referred to the previous resolutions and pointed out that the Member States should recognise their linguistic minorities and create the basic conditions for the preservation and development of these languages and cultures in the spheres of education, justice and public administration, the media, toponomics and other sectors of public and cultural life (paragraph 4).⁷¹

The Parliament, furthermore, called upon national governments and parliaments to sign and ratify the Council of Europe's Charter on Regional Languages- another proof of a mutual interconnection between the EU and the Council of the Europe and their normative systems. In this resolution, the Parliament

⁶⁷ Dashwood, Alan, O'Leary, Siofra: *The Principle of the Equal Treatment in E.C.Law*, Sweet and Maxwell, London, 1997; Elspeth Guild: „EC Law and the Means to combat racism and Xenophobia“, p.189.

⁶⁸ Toggenburg, Gabriel: *A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities*, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.4.

⁶⁹ Pan, Christoph, Pfeil, Beate Sibylle: *National Minorities in Europe*, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien, 2003, p.141.

⁷⁰ OJ 1994 No. C 61, p. 110.

⁷¹ Toggenburg, Gabriel: *A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities*, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.6.

appealed to the Commission to propose a multi-annual action programme in this field and to ensure proper budgetary financing.

In 1999, the EP adopted the **Resolution on racism, xenophobia and anti-Semitism and on further steps to combat racial discrimination**.⁷²

In this resolution the Parliament states that combating discrimination against immigrants and religious minorities is “[...] integral to any comprehensive policy against racism and xenophobia”. Indeed, the Parliament says that it attaches great importance to “[...] the participation of cultural, racial and ethnic minorities in both social and political decision-making processes.” The question of autochthonous national minorities is connected with the question of modern immigrants.

Some resolutions of the EP touched the minority agenda in a very marginal way.

For example, the **Resolution on the role of public service television in a multi-media society** calls on public service broadcasters “[...] to enact real equal opportunities to improve the representation of women and ethnic minorities in all television employment.”⁷³ The Parliament’s **Resolution on poor conditions in prisons in the European Union** makes special reference to “[...] particular groups requiring specific treatment: women, immigrants, homosexuals, and members of ethnic and religious minorities.”⁷⁴

But these resolutions and

recommendations did not lead to legally binding acts of the EC/EU. Probably the main reason was that this question was successfully solved at the level of the Council of the Europe and the EC/EU wanted to avoid duplication.

The European parliament was more active in the area of protection of national minorities than other EC/EU institutions. A majority of these initiatives depended on the activity of individual members of the European Parliament. For such initiatives, the period of the 1980s and 1990s was more favourable than previous periods. They were oriented towards the traditional struggle against discrimination of persons belonging to national minorities and the protection of their linguistic and cultural rights.

The **Charter of Fundamental rights of the European Union** (adopted in Nice in 2000)⁷⁵ is a special *sui generis* document. There was a chance that it would become a part of a new “European Constitution”.⁷⁶ But that has not happened. Its current legal status is not absolutely clear, “[...] but it is certainly not without any legal influence or effect. A range of institutional actors has already made use of its provisions.”⁷⁷ The question of the legal character and obligation of this charter will probably be definitely solved in the so-called Reform Treaty, the text of which was adopted at the summit of the European council on 21-22 June 2007 in Brussels and signed on 12th December 2007.

In its Preamble this document confirmed

⁷² OJ 1999 No. C 98, p. 48 and Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union’s Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.8.

⁷³ OJ 1996 No. C 320, p. 180 (§ 27).

⁷⁴ OJ 1996 No. C 32, p. 102 (§ 4).

⁷⁵ Craig, Paul, Búrca, Gráinne de: The EU Law (text, cases and materials), Oxford University Press, Oxford, 2003, p.359.

⁷⁶ Klučka, Ján, Mazák, Ján a kol.: Základy európskeho práva, (*Introduction European law*) IURA EDITION, Bratislava, 2004, 2004, pp.270-272.

⁷⁷ Craig, Paul, Búrca, Gráinne de: The EU Law (text, cases and materials), Oxford University Press, Oxford, 2003, p.362

all previous efforts to constitute a system of protection of human rights in the framework of the EU:

"[...] This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights."⁷⁸

The EU/EC confirmed in this Preamble (at least declaratorily) several sources for its human rights agenda:

- 1) the European Convention for the Protection of Human Rights and Fundamental Freedoms
- 2) the Social Charters adopted by the Union and by the Council of Europe
- 3) the case law of the Court of Justice of the European Union
- 4) the case law of the European Court of Human Rights

This Charter of fundamental rights also involves a number of provisions dealing with national minorities' issues. Of course, the Charter also involves absolutely basic provisions dealing with non-discrimination⁷⁹, which therefore should be presented first:

"Article 21

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion,

membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited."⁸⁰

Article 22 emphasizes the value of cultural and linguistic diversity:

"The Union shall respect cultural, religious and linguistic diversity."⁸¹

Diversity (in itself) was promoted to the level of respected value in the Charter. In several places above it had already been noted, that after many changes in value orientation, the question changed from the original "how to eliminate negative consequences of diversity" to a new one "how to protect diversity as a specific value."

Religious identity is frequently related to ethnic identity. Therefore the Article dealing with freedom of religion has its place in discussion on national minorities. In the case of this Charter it is Article 10(1):

"Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance."⁸²

But to the provisions relevant to the national minorities' agenda we may also add the article dealing with right to family right and children (Article 9):

"The right to marry and the right to found a family shall be guaranteed in accordance with

⁷⁸ Preamble, The Charter of Fundamental rights of the European Union.

⁷⁹ Lang, Peter: Minderheitenschutz in Mittel- und Osteuropa, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, p.250.

⁸⁰ Article 21, The Charter of Fundamental rights of the European Union.

⁸¹ Article 22, The Charter of Fundamental rights of the European Union.

⁸² Article 10(1), The Charter of Fundamental rights of the European Union.

the national laws governing the exercise of these rights“.⁸³

There are two reasons for this:

The first one is that this right is not such a matter of course as it may seem, especially in the situation when some minority has a different birth rate from the majority population (Roma people) or comprises immigrants from culturally different areas (for example, Africa or Asia). In this case there may be plans or wishes to regulate their natality by administrative and medical methods or to prevent them from inviting the relatives into country where they actually live.⁸⁴

The second reason is that in many cases the way or conception of family life (and of social life as general) is different from the social and family life of the majority of the population. Then the state has to solve the problem: to what extent should it tolerate and accept this? Cases in point are the Roma population and the immigrants, but also for example, nomadic populations (Sama-people in Scandinavia). They must not be an object of “social engineering” or social experiments- e.g. of a forcible removal of their children to special dormitory schools etc. The state probably should even, at least to some extent, respect the special forms of wedding or family life of those marginal populations. On the other hand, how far this should go? Sometimes in the Roma-community in Romania, Slovakia and Hungary, it is claimed that the state should acknowledge that 13-14 years is regarded as the age of sexual maturity in this population, and therefore the state should recognize marriages of 13 year old girls (frequently with 20-30 year old partners!) Or states should be more tolerant of sexual relations between relatives in those Roma communities. Of course, that is not possible because it is in

contradiction to more important principles which the state should follow.

A general freedom of the media and freedom of expression as well as other freedoms in the Charter help national minorities, which can make use of them in order to develop their social, cultural and political life (Article 11). Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive information and ideas without interference by public authority and regardless of frontiers (of states). It also allows for the distribution and presentation of information and ideas in the language of the minority, by members of the minority and for members of the minority. They have a right to do so even beyond the borders of the state where they live. The mass-media of national minorities are allowed to take their place in the wide spectrum of existing media [pluralism, Art.11(2)]. Freedom of arts and sciences (Art.13) has a similar character. The arts and scientific research shall be free of constraint. This means that also specific research oriented to national minorities (ethnography), or serving the needs of national minorities or run by its institutions (universities, organisations), is “[...] free of constraint.”

The right to education (Article 14) means not only a right to have access to education organized and paid by the state and public authorities, but also a right to establish non-state educating institutions (for example by organizations of national minorities) and “[...] the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions.” (Of course, in accordance with the national laws governing the exercise of such freedom and right.)

⁸³ Article 9, The Charter of Fundamental rights of the European Union.

⁸⁴ For example, Slovenská národná pospolitost' declared such intentions at their meetings. Slovenská národná pospolitost' (the Slovak National Community) is an extreme right-wing nationalistic uniformed organization active in 2002-2006 in Slovakia. Its activity is today restricted by the police. See: <http://www.pospolitost.sk/>.

Political participation of persons belonging to national minorities and the political life of minorities and their self-organisation, would be restricted without the freedom of assembly and of association (Article 12). This guarantees the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters.

The **Community Charter of Fundamental Social Rights of Employees** (adopted during the summit in Strasbourg on 9th December 1989) declares in its Preamble a fight against all form of discrimination, including racial, in the specific area which it applies to.

The European Monitoring Centre for Racism and Xenophobia in Vienna (est. in 1998)⁸⁵ issued **Declarations on the fight against racism, xenophobia and anti-Semitism in the youth field and on respecting diversity and combating racism and xenophobia**.⁸⁶

At the same time (1998), the EU Consultative Commission on racism and Xenophobia adopted a **Charter on European political parties for a non-racist society**.⁸⁷ It calls on democratic political parties in the European Union to act responsibly when dealing with issues related to race, ethnic and national origin and religion. It encourages political parties to work towards fair representation of racial, ethnic, national and

religious minorities within and at all levels of their party system. The Charter paves the way to rid political campaigning and discussions of the scourge of racism and xenophobia. Parties can only sign the Charter if they are committed to its principles and have shown in their activities that they are working positively to bring to life the words of the Charter.⁸⁸

This problem was also referred to in **Resolution on racism, xenophobia and anti-Semitism**⁸⁹ (B4-0108/98) of the European Parliament (1998).⁹⁰

In this resolution the European Parliament condemned racism, xenophobia and anti-Semitism and called for effective measures to fight it.

6. National minorities in external agreements and external relations of the EC/EU

The human rights agenda, including rights of national minorities, may have played (and this is very strange!) a more important role in the past in external relations with third countries (for example associated and candidate) than in the internal policy of the EU/EC.⁹¹ The European Commission since the 1980s' and 1990s' has made cooperation with third countries conditional on their progress in the areas of democracy and human rights.⁹²

⁸⁵ From 1 March 2007 the European Monitoring Centre on Racism and Xenophobia (EUMC) became the EU Agency for Fundamental Rights (FRA). See: <http://eumc.eu.int/eumc/index.php>.

⁸⁶ Alston Philip: *The EU and Human Rights*, Oxford University Press, New York, 1999: Conor A Gearty: „The Internal and External Other in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe“, p.331.

⁸⁷ *Ibid.*, p.331.

⁸⁸ Charter of European Parties for a Non-Racist Society, http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3ef0500f9e0c5.

⁸⁹ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=51995IP1239&model=guichett&lg=en

⁹⁰ Alston Philip: *The EU and Human Rights*, Oxford University Press, New York, 1999: Conor A Gearty: „The Internal and External Other in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe“, p.332.

⁹¹ The democratic character of member states was seen as a matter of course.

⁹² Regersberger, Elfriede: *de Schoutheete de Tervarent, Philippe, Wessels Wolfgang: Foreign Policy of the European Union* (collection of papers), Lynne Riner Publishers, Inc., London, 1997 : Cameron, Frase: *Where the European Commission comes in: From the Single European Act to Maastricht*, pp.104-105.

It has also started to support the democratic process in third countries with financial resources.⁹³

The wars in Yugoslavia after 1991 were a real test of the capacity of the EU/EC to manage international crisis. Now we may state that the countries of the EU/EC did not do their best. But for our purposes it is worth mentioning that with the exception of initial reactions in Summer 1991⁹⁴, in any attempt to solve this crisis they paid attention even to issues of the rights of national minorities.⁹⁵ (Carrington-plan, Vance/Owen plan, etc.)⁹⁶ The Council of Ministers of the EC on 17th December 1991 in amendment "Guidelines on the Recognition of New states in East Europe and in Soviet Union" in its "Declaration to Yugoslavia" required among other conditions that the rights of national minorities are respected.⁹⁷

Also, the well known Copenhagen criteria, adopted at the summit in 1993, were oriented to third countries and to potential candidates from East and Central Europe who wanted at that time to join the EU/EC.⁹⁸ The whole enlargement process was a good opportunity

to form clear requirements in the area of human rights.⁹⁹

In the human rights aspects of foreign policy and external relations the European Parliament was usually more progressive and radical than the European Commission or the European Council.¹⁰⁰ Maybe because its resolutions rarely had direct impact on relations with third countries. In documents regarding human rights policy, cross-border co-operation, treaty revision, or racism, the Parliament usually mentioned also minority aspects as an important aim. This goes also for the resolutions of the EP, in which the political situation of specific countries is commented upon.¹⁰¹

For example, in its "**Resolution on human rights in the world in 1997 and 1998 and European Union human rights policy**", the Parliament noted that violent conflicts around the world involved problems related to minorities. It called for a redoubling of international efforts to end large scale discrimination against religious, national, linguistic or ethnic minorities and to help resolve inter-ethnic conflicts and for greater

⁹³ Ibid., p.105.

⁹⁴ Regersberger, Elfriede: de Schoutheete de Tervarent, Philippe, Wessels Wolfgang: Foreign Policy of the European Union (collection of papers), Lynne Riner Publishers, Inc., London, 1997: Edwards, Geoffrey: The potential and Limits of the CFSP: The Yugoslav Example, p.174.

⁹⁵ Pan, Franz: Der Minderheitenschutz im Neuen Europa and seine historische Entwicklung, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien, 1999, pp.139-41.

⁹⁶ Peace plans of EC and UN for Bosna in 1991-94, http://en.wikipedia.org/wiki/Peace_plans_offered_before_and_during_the_Bosnian_War.

⁹⁷ Pan, Franz: Der Minderheitenschutz im Neuen Europa and seine historische Entwicklung, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien, 1999, p.139.

⁹⁸ Lang, Peter: Minderheitenschutz in Mittel und Osteuropa, (collection of papers) Gerrit Manssen/Boguslaw Banaszak Hrg., Wien, 2001: Reiner, Arnold: „Europäische Union und Minderheitenschutz“, pp.242/43.

⁹⁹ Regersberger, Elfriede: de Schoutheete de Tervarent, Philippe, Wessels Wolfgang: Foreign Policy of the European Union (collection of papers), Lynne Riner Publishers, Inc., London, 1997: Lippert, Barbara: Raltions with Central and Eastern European Countries: The Anchor Role of the EU, pp.197-198.

¹⁰⁰ Regersberger, Elfriede: de Schoutheete de Tervarent, Prhilibpe, Wessels Wolfgang: Foreign Policy of the European Union (collection of papers), Lynne Riner Publishers, Inc., London, 1997: Grunert Thomas: The Association of the Euroean Parliament: No longer the Underdog in EPC?, p.109-113.

¹⁰¹ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, 2000, p.7.

recognition and protection of communal rights, and in particular of the rights of indigenous people.

Further, it called for the strengthening of international monitoring mechanisms in relation to minority rights and for the just treatment of minorities in Central and Eastern European countries, with strict observance of fundamental rights and freedoms and the principles of equality and citizenship, without undermining their identities, particularly in candidate countries (at that time including Slovakia).

In the **Resolution on respect for human rights in the European Union** (1997), the EP stated that "accession to the European Union is out of question for states

„[...] which do not respect fundamental human rights, and calls on the Commission and Council to lay particular stress on the rights of minorities (ethnic, linguistic, religious, homosexual etc.) at the time of enlargement negotiations.“¹⁰²

In Resolutions on specific countries the Parliament from time to time mentioned a specific problem related to the protection of national minorities.¹⁰³

For example, in the **Resolution on the political situation in South America** (1989), it underlined the importance of equal access for all sections of society to training and education.¹⁰⁴

In the **Resolution on the violation of political and human rights in the Islamic**

Republic of Iran (1996) the EP demanded guarantees for equal rights to religious minorities.¹⁰⁵

The **Resolution on Burma** (1999) laid stress on the dialogue between the government and local national minorities.¹⁰⁶

The **Resolution on the situation of human rights and indigenous minorities in Argentina** (1997)¹⁰⁷, **Resolution on the political rights of minorities in Albania** and **Resolution on the protection of minority rights and human rights in Romania** (1995)¹⁰⁸ have a similar character.

The EC/EU incorporated human rights agenda in its external trade in the 1980s. The first trade agreement containing a human rights clause was the LOMÉ IV. in 1989.¹⁰⁹

Since then different types of human rights clauses, varying in content as well as in enforcement, have been developed. The human rights dimension plays a role also in the Mediterranean partnership, in cooperation with post-Soviet states, ASEAN-countries and Latin America countries.

Minority protection is to be found in the Convention concluded between the African, Caribbean and Pacific States and the Community, in Agreements on partnership and co-operation, in Council regulations on assistance to and co-operation with developing countries in Asia and Latin America etc. Minority protection is also a general element of reports on third countries.

In 1991 the EC made recognition of any

¹⁰² OJ 1999 No. C 98, p. 279 (§ 10).

¹⁰³ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.8.

¹⁰⁴ OJ 1989 No. C 47, p. 28 (§ 10).

¹⁰⁵ OJ, 1996 No. C 96, p. 295 (§ 4).

¹⁰⁶ OJ 1999 No. C 219, p. 405 (§. 6).

¹⁰⁷ OJ 1997 No. C 115, p. 171.

¹⁰⁸ OJ 1995 No. C 249, p. 157.

¹⁰⁹ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.14.

new state in former socialist countries conditional on guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE.¹¹⁰ On 16 December 1991 the Foreign Ministers issued, within the framework of European Political Cooperation, a Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia.¹¹¹ The EC thereby introduced minority protection as a new element within the spectrum of conditions for the recognition of statehood.

Since 1995 the agreements have contained reference either to the Universal Declaration of Human Rights or, when the partner State is an OSCE State, to the OSCE principles.¹¹²

But as soon as the EU/EC incorporated in its external relations an agenda of national minorities, it was criticised for „a double standard“, because the Community still ignored, at least formally, the issue of minority protection within its own borders.

The situation regarding protection of national minorities was thoroughly investigated in the case of candidate countries (which joined the EU in 2004 and 2007). Now Turkey, Croatia and Macedonia are being monitored in regard to this aspect.

At the meeting held in Copenhagen in June 1993, the European Council established conditions for countries in Central and Eastern Europe to be fulfilled before accession. The so called Copenhagen criteria were political,

economic and administrative and legal (the capacity to adopt the *acquis*). One of the political criteria of Copenhagen (besides democracy, rule of law and human rights) is the respect for and protection of minorities.¹¹³

The Amsterdam Treaty transposed all the Copenhagen-criteria - except the one concerning minority protection - into Primary law. Many exclusion of minority-criteria proves that this agenda is extremely sensitive for several states and it is not easy to reach a compromise in these questions. „Old members states“ are willing to question candidate countries or “new member states”, but in this absolutely sensitive matter they themselves do not want to admit an intervention of the EU. France, UK and Spain for example consider their problems with Northern Ireland, Corsica and Basques as internal problems.

Clearly, in legal terms the regular conditions for accession are found in Primary Law, and the minority provision of the Copenhagen-criteria has a political nature, being adopted in the conclusions of the European Council. Nevertheless, in an indirect sense they might be seen as binding in as far as they reflect already existing political wills.

„Hence the question whether *«respect for and protection of minorities»* is part of the *acquis* or not, should indeed be raised. If no legal Community standard is identified, the standard applied in the course of eastern enlargement has to be of a (more or less) political nature.“¹¹⁴

During the accession process the

¹¹⁰ Ibid., p.15.

¹¹¹ See further: Rich, Roland : Recognition of States: The Collapse of Yugoslavia and the Soviet Union, 2000?, <http://www.ejil.org/journal/Vol4/No1/art4.html>.

¹¹² Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.16.

¹¹³ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.16.

¹¹⁴ Ibid., p.18.

Commission presented its Opinions as to whether and to what degree the applicant States fulfilled the conditions for being admitted to accession negotiations. It discussed the respective minority situations in detail, using a broad definition of both minority groups as well as of minority protection. Since November 1998, the Commission has issued its regular reports in which it analysed whether, in the light of the Copenhagen criteria, the reforms announced or indicated had in fact been implemented. The Accession Partnerships (APs) adopted in 1998 indicated certain short-term priorities, including also minority items for each candidate state. Slovakia was requested to adopt legislation on the use of minority languages and Latvia and Estonia were to facilitate the conditions for the naturalisation of non-citizens. In the medium term it is recommended that "the Czech Republic, Hungary, Bulgaria and Romania improve the integration of the Roma population".¹¹⁵

The criteria for minority protection also became a crucial element of the EU's policy towards South-Eastern Europe.

Romania is in many aspects close to its central European neighbours and therefore it has usually respected the rights of its national minorities (mainly Magyars and Germans). The problem of Roma people is more painstaking and similar to the situation in Slovakia or Hungary. In Bulgaria the problem of Pomacs, Gypsies and Muslims was solved (at least formally) by political participation of representatives of those minorities in ruling coalitions. In the case of Turkey, an armistice and negotiation was a crucial condition for opening negotiations. But in the Turkish case there are many issues

relating to national and religious minorities: the problem of the Armenian genocide, the position of religious minorities etc.

In its external activity, the EU also pays attention to questions of indigenous peoples.¹¹⁶ The EU has already established a framework for its activities in this area through a working paper presented in 1998, which was reaffirmed by a Development Council Resolution adopted in the same year.¹¹⁷

For this activity three guidelines were defined:

- 1) integrating the concern for indigenous peoples into all Union policies, programmes and projects.
- 2) consulting indigenous peoples in policies and activities that affect them.
- 3) providing support in key thematic areas.

Questions concerning indigenous peoples have been integrated into a series of agreements and strategic documents concluded with the EU's partners, mostly from ACP-group (African, Caribbean and Pacific countries) and in the Initiative for Democracy and Human Rights (EIDHR).

On the other hand, the EU policy towards indigenous peoples within the borders of the Union is not so clearly defined. However, for example, we can view in this light also an Aim 6 of structural and cohesion policy (a support of regions of low density of inhabitants in Sweden and Finland).

As there is an interrelationship between the internal and external dimensions of the EC/EU, the development of the protection of rights of persons belonging to national minorities in external activities necessarily contributed to progress also in internal politics.¹¹⁸

¹¹⁵ In reality the 'Partnerships' are not a bilateral instrument (as the name would suggest), but mere communications of the Commission (see OJ 1998 No. C 202, pp.1-97).

¹¹⁶ See Report from the Commission to the Council of 11 June 2002 „Review of progress of working with indigenous peoples“ COM(2002) 291.

¹¹⁷ Conclusions of the Development Council- 30th Nov.1998.

¹¹⁸ Craig, Paul, Búrca, Gráinne de: *The Evolution of EU Law* (collection of papers), Oxford University Press, Oxford, 1999: Cremona, Marise: „External relations and External Competence: The Emergence of Integrated Policy“, p.137.

7. Financial and organizational measures of the EU

In addition to legal acts the institutions of the EU also organize some practical steps in favour of minority cultures and languages.¹¹⁹

The Commission, for example, financially supports a non-profit organisation, the European Bureau for Lesser Used Languages (EBLUL), which represents EU citizens who speak autochthonous languages.

In 1982 the EP and Commission started co-financing of projects aimed at improving the quality of learning and the instruction of regional and/or minority languages, as well as preparing a future dissemination of information, experience and expertise in the field of regional/minority languages.¹²⁰ The languages which may benefit from this budget are the indigenous languages traditionally spoken by part of the population in an EU Member State. Dialects, migrant languages and artificially created languages are excluded.

The Commission has also supported several studies on the situation of minority languages through the MERCATOR programme which consists of a net of research institutions. For example, in 1984 the Commission published a study on the situation of the lesser used languages in the European Community, in 1990 a study on the situation of linguistic minorities in Greece, Spain and Portugal.¹²¹

The biggest research project was the EUROMOSAIC (1993/94)¹²² activated by the European Commission to map the situation of minority or regional languages in the EU. In 12 states of the EU it identified 43 regional or minority languages.¹²³ The result of this work was published in 1996 as a report on **The production and reproduction of the minority language groups in the European Union.**¹²⁴

The EU's eastern enlargement (2004) gave a special impetus to look beyond the linguistic dimension of minorities in Europe, giving the minority question a clear political (and legal) dimension. However, this new approach seems to be limited to the minorities in Central and Eastern Europe.¹²⁵ Old member states often find it difficult even to admit that they have some „minority problem“ in which the EU can intervene.

The European Commission (within the PHARE Programme) co-financed a Joint Programme entitled **Minorities in Central European Countries** together with the Council of Europe, which included seminars on „minorities and media“, „minorities and education“, „minorities and participation in decision-making processes“.¹²⁶

Also the multi-annual programme to promote the linguistic diversity of the Community in the information society (MLIS) aims (also) at promoting a multilingual Europe and partly funds MELIN (Minority European

¹¹⁹ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.9.

¹²⁰ Ibid., p.9.

¹²¹ Ibid., p.10.

¹²² See further: Euromosaic, ?, <http://www.uoc.edu/euromosaic/>.

¹²³ Pan, Franz: Der Minderheitenschutz im Neuen Europa und seine historische Entwicklung, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien, 1999, p.142.

¹²⁴ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.10.

¹²⁵ Ibid., p.11.

¹²⁶ Ibid., p.11.

Languages Information Network).¹²⁷ This program provides information in four minority languages: Irish, Welsh, Catalan and Basque.¹²⁸

The EC and EU also provide financial support for minority-relevant situations such as, for example, the translation and dissemination of works of contemporary literature in lesser used languages,¹²⁹ the conservation of regional culture¹³⁰ and the promotion¹³¹ of research on minority languages.

The Treaty of Maastricht (1992) supported a process of de-economisation of European integration and gave it a political dimension. Cultural aspects started to play a more important role in European integration.

Culture and other new Community competencies such as education opened up new legislative possibilities. One has to point out that cultural measures had already been taken in times in which the integration process was formally limited to the economic dimension.

8. Treaty Establishing the Constitution for the European Union

The Treaty Establishing the Constitution for the European Union signed on 29th October 2004¹³² (See Appendix XX) in Rome never came into force. This project was abandoned, and institutional reform of the EC/EU will be realized in another way. But this treaty dealt with the national minority agenda much more than previous treaties. It was another example of the important shift in

thinking which came about in the 1990s. It is an expression of changes which occurred at that time. This document was also an attempt at a wider democratisation of the EU. It was a product of the work of the European Convention in 2003-2004.¹³³

Almost right at the beginning, the second Article (I-2), dealing with values, confirms the importance of the minorities in the EU:

"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**. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

The definition of the Union's objectives also confirms the fight against discrimination:

"It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child." [Art. I-3(3)].

This Article also states that the EU "[...] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."

The principle of non-discrimination is again confirmed in part III. According to Article III-118:

"In defining and implementing the policies and activities referred to in this Part, the Union

¹²⁷ Toggenburg, Gabriel: A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities, European Integration online Papers (EIoP) Vol. 4 (2000) N° 16; <http://eiop.or.at/eiop/texte/2000-016a.htm>, p.14.

¹²⁸ See Melin homepage: <http://www.ite.ie/melin.htm>.

¹²⁹ Community programme ARIANE (OJ 1997 No. L 291 and OJ 1999 No. L 57).

¹³⁰ RAPHAEL programme (see OJ 1997 No. L 305).

¹³¹ KALEIDOSCOPE programme (see OJ 1996 No. L 99 and OJ 1999 No. L 57).

¹³² Fischer, Peter: Zmluva o Ústave pre Európu, (*Treaty on Constitution for Europe*), BVSP, Bratislava, 2005: Fischer, Peter: "Európsky konvent a Ústava pre Európu: Fenomény politickej transformácie", p.25.

¹³³ Ibid., pp.11-13.

shall aim to combat discrimination based on sex, **racial or ethnic origin, religion** or belief, disability, age or sexual orientation.”

Article III-124 grants authority to the Council to establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after obtaining the consent of the European Parliament. European laws or framework laws may establish basic principles for Union incentive measures and define such measures, to support action taken by member states in order to contribute to the achievement of these objectives.

The European Union in this basic document would have fully and definitively accepted the European Convention for the Protection of Human Rights and Fundamental Freedoms and also the Charter of Fundamental Rights which constitutes Part II. The human rights agenda (including minorities' issues) would have thereby become definitely an integral part of the EU-law (Article I-9):

1) The Union shall recognise the rights, freedoms and principles set out in the **Charter of Fundamental Rights** which constitutes Part II.

2) The Union shall accede to the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. Such accession shall not affect the Union's competences as defined in the Constitution.

3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the **constitutional traditions common to the Member States**, shall constitute general principles of the Union's law.”

If this draft of the Constitutional Treaty had been accepted, the three sources of human rights would have been defined:

1) Charter of Fundamental Rights of the EU (a result of development in the framework

of the EC(EU)

2) European Convention for the Protection of Human Rights and Fundamental Freedoms (with roots in international law)

3) The constitutional traditions common to the Member States. By that I mean the general principles which have developed in European legal thinking and which have gradually been enforced in the national law of member states.

The Union would have thereby inherited all the tradition of protection of national minorities which is part of the systems mentioned above.

However, like today, there would have been no body representing minorities at the EU-level.

On the other hand, the Committee of regions could to some extent play this role:

“The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly”- [Art.I - 32(1)].

The Union in accordance with the draft of the constitution, would have been obliged to respect the status of religious organizations. (Article I-52). And as we know in many cases religion is closely related to an ethnic origin different from that of the majority population in a given state For example: Jews, Muslims, Greeko-Catholics or Orthodox people in Poland, Slovakia etc. Respect for the religious specificity helps to preserve also the specific ethnic character. By this article the Union should respect the status under national law of churches and religious associations or communities in the Member states. Equally, philosophical and non-confessional organizations should be respected. The Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

This article re-confirmed the respect for

religious freedom declared in the Charter of Fundamental rights adopted by the European Parliament, Council and Commission during the conference in Nice on 7th December 2000, which is Part II of the draft "European Constitution":

Further, Article III-280 and 281 should serve to promote cultural cooperation and tourism, from which even minorities can benefit.

After the French referendum of 29th May 2005, in which the Treaty Establishing the Constitution for the European Union was rejected by the French voters, the idea of the "European constitution" was abandoned definitively at the summit on 21-22 June 2007 in Brussels.¹³⁴ But it could have represented a significant step forward in an effort to promote the human rights and national minorities agenda at the level of the EU.

The attempt to adopt an "European constitution" is now history. The effort is concentrated now on so called institutional reform and a Reform Treaty. This Reform Treaty should definitely provide a legal obligation to the Charter of Fundamental Rights and to define a new goal for the EU respect for cultural and language variety and respect for a cultural heritage.¹³⁵ These two changes would have some important impacts also on the position of national minorities and their protection in the EU.

9. Actual questions

It is not possible to reduce the ethnic (or national) minorities problem to the language

question, but it (usually) constitutes the main problem.

At the level of the EU, in the near future we will have to cope with some challenges.

The traditional schema is that each member state has its own official language: each state has one and only one. In some cases two or more states have one common language- for example Germany and Austria. Those languages are equal at the EU level (at least formally).

However:

1) What shall we do in a case of official bilingualism, trilingualism etc. in a member state? Shall we accept that one state will have the privilege to bring with it two official languages? Until now the EU has had "good luck" because in all cases of official bilingualism (Finland, Belgium), one or both languages were an official language of some other member state (France, Sweden, Netherlands, etc.). In the case of Ireland this state for a long time accepted English as the only language representing it. But this has now changed - on 13 June 2005 the Council of the EU (GAERC-formation) decided that Irish would be 21st official language of the EU. This decision came into effect on 1st January 2007. On this day also Romania and Bulgaria joined the EU.¹³⁶ Therefore, as from that date we have 23 official languages.

But in the future this problem will emerge. Maybe in Bosnia, Ukraine or in the Baltic states, if the status of the Russian language is changed.

2) The language policy of the EU as a whole is now questionable.¹³⁷ Do we really

¹³⁴ Brussels European Council, Presidency Conclusions, 21-22 June 2007

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf.

¹³⁵ See: Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community, Brussels, 24 July (2007), CIG 4/07

¹³⁶ http://en.wikipedia.org/wiki/Languages_of_the_European_Union.

¹³⁷ For the language policy of the EU see: Fischer, Peter, Köck, Heribert, Franz, Karollus, Margit Maria: *Europarecht*, Linde Verlag, Wien, 2002, pp.386-388 and Tichý, Luboš, Rainer Arnold, Svoboda, Pavel, Zemánek, Jiří, Král, Richard: *Evropské právo, (European Law)*, C.H. Beck, Praha, 1999, st.136-137.

need for example, language equality of all official languages? In practice it is not ensured. In particular the languages of smaller and newer members are frequently ignored. And if we accept the necessity of reduction of the language “Babylon”, which languages should stay as “the main languages of communication”? Now we have two or three such languages: English, French, and less officially even German. But why do we need 3 or 4 such languages? - if the main purpose is communication and not national prestige... Is it not *one* more than enough? For example, a somewhat simplified English? (The language which has actually “won” in the international framework.) And if we accept French or German because of the tradition and maybe the frustration of those nations, why not likewise accept Italian, Spanish, Polish, and then Swedish, Slovak etc? And the “Babylon” is back here...

From the experience of multilingual states or empires (Belgium, Soviet Union, Finland, Austro-Hungary, Czechoslovakia, Canada, South Africa, India, etc.) we know, that in spite of the declared equality of two or more official languages, in practical use one language has always prevailed.¹³⁸

3) The challenge most connected with the topic of this thesis is the status of minority languages. To what extent should the EU (and its member states) accept the languages of national minorities as official or semi-official languages at the EU level? This problem is topical because the Spanish government in 2004 demanded a special semi-official status for 4 minority languages- (Basque, Galician, Valencian and Catalanian).¹³⁹ These languages are also referred to as not nation-

wide official languages. Initially this initiative did not find approval from other member states. But on 16 October 2005 the Committee of regions approved the use of Catalanian, Galician and Basque (but not Valencian) in addressing the EU institution, with interpretation provided by the European commission interpreters.¹⁴⁰ On 3 July 2006 the European Parliament’s Bureau approved a proposal by the Spanish state to allow citizens to address the European chamber in Basque, Catalanian and Galician. One can say that these three languages have indirectly obtained the status of “semi-official” languages. However, such recognition could start a wave of similar demands on the part of other minority or regional languages. Even in the present EU there are about 20- 40 languages which could ask for the same status. Many of them have a long tradition of literature, use in political life and in published newspapers etc. Another potential candidate for a special “semi-official” status might be Russian. Russian is the native language of about 1.5-2 million Slavs living in the Baltic states of Latvia, Estonia and Lithuania.¹⁴¹ It is the dominant spoken language in Riga, Daugavpils, Narva and some other areas. These states do not recognize Russian as an official or minority language and Estonia and Latvia hinder ethnic Russians from obtaining citizenship of these countries. But this policy may be relatively quickly changed, because it is in conflict with the human rights policy of the EU and the Council of Europe. There are together about 6 million people living in the EU who consider Russian as their native language. The proportion of the EU population speaking Russian as a mother or foreign

¹³⁸ It is out of the scope of this thesis but it would mean that any effort to reduce a dominating position of the English language in Europe is useless.

¹³⁹ Memorandum by the Spanish Government, Request for official recognition in the European Union of all languages with official status in Spain. 13-XII-2004.

¹⁴⁰ http://en.wikipedia.org/wiki/Languages_of_the_European_Union.

¹⁴¹ Ibid.

language is about 10%. Russian is therefore is the 7th most spoken language in the EU.¹⁴²

Probably we should accept the solution that on the level of the EU only such languages are to be admitted as official which in any given member state are used officially on its entire territory. The use of minority or regional languages or even not nation-wide official languages should be within the competence of a member state.

4) In the near future a great challenge will emerge on the level of the EU but also of the national states in the case of so called non-recognised minorities. This means minorities of later immigrants and their non-indigenous languages. They are people who came to the European states in the 20th century and do not enjoy the status of traditional minorities with the wide scope of rights belonging to traditional minorities. The question is whether this differentiation is ethically and legally sustainable...

10. Conclusions on protection of national minorities in the EU

If we study the attitudes of the EU to legal protection of the national and ethnic minorities we reach the conclusion that:

1) Protection of the national minorities **has not become a generally accepted legally binding principle of the EU**, although in several legal acts issues of national minorities are mentioned.

2) On the other hand, **the political relevance of national minorities' protection is very high.**

3) In this matter **the EU relies more on other international organizations which are more oriented to protection of human rights** (Council of Europe, OSCE etc.). The EU in practice took over their norms.

4) In external relations, protection of

national minorities became **one of the main criteria for cooperation with the EU or even for accession.**

5) The importance of protection of national minorities **will probably grow** in the future. Minority protection is not yet a part of the *acquis*, even if developments are currently moving in this direction.

6) In the European Union and its member states we can identify **several categories** of regional, minority or simply other than official **languages**:

a) Minority languages specific to a region of one or more member states. This would cover languages (and minorities) like Basque, Breton, Catalan, Ruthenian etc.

b) Languages spoken by a minority in one member state but which are official languages in another EU country (Magyar in Slovakia, French in the Vallée d'Aosta, German in southern Denmark). People speaking these languages are an ethnic minority in a state in which they actually live, but on the level of the EU their language is not in the position of a minority language and they do not feel any handicap on the EU-level regarding the access to EU-documents or institutions.

c) Non-territorial minority languages such as those of Roma or Jewish or Armenian ethnic groups. These languages and minorities are respected and protected, but on the other hand it is difficult to secure a right to communicate with public authorities in their languages for the members of these ethnic groups because in any territorial unit within the State they do not form a relevant quota of population.

d) Non-indigenous languages- languages of recent emigrants who came to EU-member states as "Gastarbeiter", mostly after the 1950s. All states respect their human dignity and right to develop their culture and use their languages, but without official recognition of

¹⁴² Ibid.

their languages (Turkish, Urdu, Arabic, Hindi etc) as minority languages and without any official support and specific regime regarding their use in public and in communication with official authorities.

f) Dialects of official or minority languages. They do not have any official status, but in several countries (Italy, Slovakia) dialects are widely used by the country's population and sometimes even books or newspapers are published in local dialects. There is no exact border between a dialect and official or minority language. Often it is only a political decision or a result of historic development.¹⁴³

The EU cannot back down in the area of protection of national minorities. All that is in question is the speed of the process of incorporation of the human rights and national minorities agenda in the *acquis* and Primary law of the EU. It is obviously connected with the future tendency of development of European integration. The so-called deeper integration means above all integration in questions of administrative, judicial and human rights cooperation and unification of standards. (Besides defence and foreign policy, it is the only area where there are reserves for unification).

The first period of an increased interest in the rights of national minorities was characterized by resolutions of the European Parliament on the linguistic heritage of minorities. Then in the 1990s the enlargement dimension had minority protection as a typical aspect. The EU concentrated more on national minorities in candidate countries than within its own territory. But the main obstacles to starting a discussion about the position of national minorities in the agenda of the EU were overcome. At this time minority protection was reduced to the external sphere of the EU.

But this situation was changed. During the years 2000-2006 we were able to speak of an introduction of the national minorities agenda in the discussions on European integration. It was a result of adopting the Charter of Fundamental Rights of the EU (2000) and discussion about a draft of European constitution and Lisbon Treaty.

European integration (originally an economic project) obtained a significant political dimension. Therefore it is only a question of time before protection of national minorities becomes a steadfast part of the whole system of the EU.

¹⁴³ Dutch has sometime been seen only as a German dialect, Slovak as a local version of the Czech language and recently one dialect "Ruthenian" was promoted from the position of an Ukrainian dialect to an independent language.

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