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Minority Rights in the Context of the EU Enlargement: a Decade Later

The European Union (EU) paid considerable attention to national minorities after the Cold War when it used minority protection as a criterion for recognition of new states and EU membership – i.e., in a limited area of Central and Eastern Europe (and in South Europe), as a criterion for states from this region to participate in European integration. The EU has used minority protection as a matter of good governance of new states and states wishing to join the EU. The candidates were subject to Europeanisation when they were expected to adopt certain minority standards in order to prove that they adhere to European norms and values. This paper analyses what has happened with respect to the objective of minority protection in the decade after the 2004 enlargement. It demonstrates that this Europeanisation has been limited at best and that it has not led to notable changes in actual behaviour towards national minorities. This is due not only to intra-EU structural issues, but also due to how Europeanisation was carried out.

Keywords: European Union, minority protection, Framework Convention for the Protection of National Minorities, European Union enlargement, Europeanisation

Manjšinske pravice v kontekstu širitve Evropske unije: desetletje kasneje

Evropska unija (EU, Unija) je po koncu hladne vojne namenila precej pozornosti narodnim manjšinam. Varstvo narodnih manjšin je namreč razumela in uporabila kot predpogoj tako za priznavanje novih držav kot za članstvo v EU – torej na omejenem območju Srednje in Vzhodne (ter Južne) Evrope, in sicer kot kriterij za države iz te regije, da vstopijo v evropski integracijski proces. Unija je tako varstvo manjšin povezala z dobrim vladanjem v novih državah oziroma v državah, ki so se želeli vključiti v EU kot polnopravne članice. Države kandidatke so se mora evropeizirati (sprejeti evropske norme in vrednote), kar je vključevalo tudi sprejem določenih manjšinskih standardov. Pričujoči članek analizira dogajanje v zvezi z varstvom manjšin v desetletju po veliki širitvi EU leta 2004. Članek pokaže, da je bila ta evropeizacija v najboljšem primeru omejena in da ni vodila v znatne spremembe obnašanja držav do njihovih manjšin. To izhaja tako iz notranje strukture delovanja EU, hkrati pa je povezano tudi z načinom samega procesa evropeizacije.

Ključne besede: Evropska unija, varstvo manjšin, Okvirna konvencija za varstvo narodnih manjšin, širitev Evropske unije, evropeizacija

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1. Introduction[1]

Like other international political institutions and organisations, the European Union (EU) became interested in minority protection in the context of post-Cold War state-formation and nation-building in Europe in the early 1990s. This international interest in new/old national minorities led to the formation of a new multi-layered European regime for national minority protection, whose goal was to preserve peace and stability by enabling persons belonging to national minorities to preserve their distinct ethnic, linguistic, and religious identity (Roter 2003). Whereas the Organisation (the "Conference" until 1994) for Security and Co-operation in Europe (OSCE) formulated a set of guiding principles and politically binding norms on minority protection, the Council of Europe (CoE) transformed those commitments into legally binding norms in the form of the *Framework Convention for the Protection of National Minorities* (FCNM, 1995/98) (Roter 2009).

Without any minority rights of its own, the EU still managed to become a notable actor in the process of implementing minority protection as a European collective choice for conflict prevention. In the early 1990s, the EU developed two important mechanisms to this effect: minority protection was listed as a criterion for state recognition and EU membership was made conditional on minority protection. The candidate states (henceforward, *candidates*) for state recognition and later for EU membership (for enlargement in 2004 and later, in the cases of Bulgaria, Romania and Croatia) worked hard, under the supervision of the European Commission (EC), to change their laws and policies on minority protection, but there is no unified view about the impact of those EU mechanisms in practice. Whilst the first OSCE High Commissioner on National Minorities was of the opinion that minority protection as a condition for EU membership "/had/ made an important impact" (van der Stoel 2000, 2), Hughes and Sasse (2003, 30) were pessimistic about EU conditionality due to *ad hocism*, inconsistency and the emphasis on formal requirements, rather than substance:

> /... / this instrument was employed less to promote EU norms and evaluate their implementation, but rather was more of a process-oriented process that emphasized 'progress' at all costs. Nevertheless, /…/ it successfully implanted the objective of 'minority protection' as an integral part of the political rhetoric /… in the candidates/. It may be that learning 'EU speak' is a step in the transmission of values that will be internalized and reflected, given time, in institutional change and modified political behaviour. Alternatively, the language of 'European' norms could be seen by some countries as the end in itself.

With their entry into the EU, the EC's supervisory powers ceased to exist over Central, Eastern and South European new members, but minority issues are as relevant as they were during the enlargement – both internally and outside the

EU: in the Crimea, Ukraine, the referenda carried out in Scotland and announced but then cancelled in Catalonia, or in nationalist Hungary. A decade after the 2004 enlargement, a question seems to be relevant about the actual impact of the EU's involvement in minority protection. Has the goal of minority protection been internalised over the past decade to the extent that the results have been reflected in practice? or what happens with minority protection when 'they' (candidates) become 'us' (EU members) and the EC no longer supervises the implementation of minority rights? From a theoretical perspective, this analysis seeks to further our knowledge about the process of Europeanisation, broadly understood "as a process in which states adopt EU [formal and informal] rules" (Schimmelfennig & Sedelmeier 2005b, 7).

This paper seeks to answer these questions by empirically analysing minority protection in the ten EU member states which joined the EU in 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), in the time span of about ten years. By examining the state of minority protection and open issues as perceived and declared by the EC at the time of the EC's approval of their membership, and the state of affairs in minority protection and possible open issues some ten years later as established by most relevant international organisation for minority protection (the Council of Europe), this paper intends to shed light on the somewhat controversial issue of conditionality and its post-enlargement impact in practice. This analysis is relevant for understanding the transformative power of the EU in the sense of having initiated genuine minority protection that goes beyond mere legislative changes and results in actual behavioural changes.

In addition to the introduction and the conclusion, the paper is composed of four parts: a brief discussion of Europeanisation, which provides a theoretical framework for the present analysis; an analysis of the EU as a promoter of minority protection; and the empirical parts, with methodology and results. The concluding section discusses the results in the context of the research questions that guided this analysis.

2. Europeanisation Through Conditionality

Europeanisation in the context of EU enlargement (Hughes et al. 2004; Schimmelfennig & Sedelmeier 2005a; Grabbe 2006; Haughton 2007) was intended to assimilate the candidates to the existing members by adjusting their legislation according to the EU law (the *acquis*), and by meeting certain democratic standards, including minority rights. The expectation was that legislative and behavioural changes would be assured. Such changes could be initiated due to domestic or EU incentives, and there were two types of logic of action following rule adoption: the logic of consequences and the logic of appropriateness (Schimmelfennig & Sedelmeier 2005b, 8–9). Whereas in the former rational choice logic "assumes

strategic, instrumentally rational actors who seek to maximize their own power and welfare", then in the latter sociological, institutionalist logic motivates actors "by internalized identities, values, and norms" (*ibid*., 9). So instead of bargaining about conditions and rewards, actors were to choose the most appropriate action, by persuasion rather than coercion, and they would engage in complex learning process (*ibid*.).

At the time of the 2004 enlargement it was clear that while the conditions in general were mostly met due to external incentives, the criterion of minority protection in particular was fulfilled by the Central and East European (CEE) countries based on the level of minority protection prior to enlargement. For, "/i/n cases of high societal [rule] resonance, domestic empowerment is an option, whereas in cases of low resonance, the EU must reply on intergovernmental bargaining. / … / Quite obviously, for the authoritarian governments of the region, democratization and the introduction of minority rights was an issue of lesson-avoidance rather than lesson-drawing", whereas more democratic governments had adopted minority rights even prior to enlargement (Schimmelfennig & Sedelmeier 2005c, 215). If rules needed to be changed, the EU's transformative power was at its greatest at the beginning of decision-making on accession, rather than at the end of the negotiations when the candidates already expected the rewards (Haughton 2007).

Still, the candidates paid attention to progress reports by the EC, which included the EC's assessment of the extent to which the criterion of minority protection was fulfilled. Having concluded that the candidates met the criterion in its last progress reports, the EC nevertheless listed a number of open issues to be addressed by the would-be member states. And it is these open issues, and further developments with respect to addressing them, that are of particular concern here. In the decade after the 2004 enlargement, it seems worthwhile to re-examine the role of the EU in the area of minority protection, with a view to assessing to what extent the former candidates followed the logic of appropriateness, rather than solely the logic of consequences, given that they have all reached the goal, i.e., EU membership. If the candidates adopted minority rights because it was appropriate, rather than because it was required in order to become EU members, then minority protection should have improved in the meantime. If, in contrast, the candidates secured minority rights in order to gain EU membership, then the issues and problems with respect to implementation of minority rights in practice are likely to have persisted. The logic of appropriateness would most likely work better in an environment that is generally supportive of minority protection. However, this is where the first major obstacle appears in the cases under examination here: namely, the very EU rules on minority protection that are to be transferred and applied nationally are largely missing.

3. The EU as a Promoter of Minority Protection Elsewhere

The EU first promoted minority protection with its new approach to state recognition in the early 1990s. Given that the systemic changes led to violent conflicts, it came as no surprise that minority protection was accepted as one of the necessary conditions to be met by the new states applying to be recognised as such by the then European Communities (ECs). It was first the European Parliament (EP) that in November 1991 understood the necessity to link recognition of the Yugoslav republics with "adequate guarantees for the protection of human rights and the rights of national or ethnic groups" (Terrett 2000, 80). This approach was confirmed by the ECs the following month: alongside more general political demands such as the rule of law, democracy and human rights, the 1991 *Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union'* listed as a necessary criterion to be met by the new states "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE". At the time, the CSCE (OSCE) commitments were very modest (Roter 2003; 2009), but the EU was able to implement this condition, particularly in the Yugoslav context. An arbitration commission (better known as the Badinter Commission) established to advise the Conference on Yugoslavia on international recognition of individual Yugoslav republics stated that "respect for the fundamental rights of the individual and the rights of peoples and minorities, are binding on all the parties to the succession."[2] The Commission left no doubt that ethnic, religious or language communities "have the right to recognition of their identity under international law."[3]

Internationally, however, the conclusions of the Badinter Commission did not always receive the desired response. For instance, the Commission's negative opinion[4] of Croatia's minority rights guarantees for its Serbian community had little effect on the international recognition of Croatia. It put the country under pressure to rush through its parliament a constitutional law on minorities, but this happened only after it had been recognised as an independent state. These developments cast some doubt about the seriousness of the ECs to make states develop even a suitable normative framework for minority protection (leading to appropriate behaviour).

In contrast to minority protection as a criterion for state recognition, the EU's promotion of minority rights as a condition for EU membership has received a somewhat more united response within the EU. The decision by the European Council in Copenhagen in 1993,[5] which required candidates to meet a number of political and economic criteria, including "respect for and protection of minorities", was closely monitored by the EC. This mechanism was still meant for the outsiders, but it was being used by an EU institution, on behalf of the EU, rather than by individual EU member states.

EU candidates thus subjected themselves to fulfilling the criteria and being monitored along the way by the EC (see Hillion 2008). The EC regularly assessed their progress in meeting the criteria, and it also conditioned its financial aid to those states.[6] This approach, well intentioned as it may have been, soon proved very problematic for at least two reasons. Firstly, the monitoring of newcomers, but not of established members, created a perception of double standards, even though the candidates were willing to accept this approach. In practice, such conditioning certainly encouraged the applicant states to pay greater attention to the interests of their minorities (Open Society Institute 2002, 17), but – as some researchers pointed out very early on – it was not clear whether the candidates' interest in the well-being of minorities was not simply a means to achieving the final goal, EU membership.[7] Liebich (1998) reflected on this discrepancy: "It must be grating for post-communist governments to hear 'standard of civilisation' arguments from countries where minority conflicts are more violent than any in East Central Europe (Northern Ireland, Corsica, Basque country) and where instances of deplorable treatment of minorities abound".

Secondly, an even bigger and very obvious problem was the lack of any internal substantive EU norms on minority protection (Hillion 2008). Intense scrutiny of minority protection in the EU candidates exposed the fact "that the EU's own commitment to minority protection is insufficiently well-developed and inconsistently applied" (Open Society Institute 2002, 17). There is no clear description as to what the Copenhagen political criterion on minority protection entailed. When asked to specify its contents, the EC replied that in "assessing progress made by the candidate countries with regard to this criterion", it devoted "particular attention to the respect for, and the implementation of, the various principles laid down in the [CoE FCNM], including those related to the use of minority languages."[8]

This lack of internal minority norms is neither surprising nor coincidental, given the different views by EU members on minorities, minority rights and minority protection, which range from a denial of minorities to a full spectre of minority rights. Accordingly, when the Amsterdam Treaty[9] transformed the Copenhagen political criteria into the EU primary law, the criterion on minority protection was explicitly omitted. According to its Article 6(1), the EU "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." These are the principles, according to Article 49 (para. 1), that are the basis for EU membership applications. Given such an explicit omission of the criterion on respect for and protection of minorities from the "founding principles of the EU" which might be common to all EU member states, minority protection failed to obtain "a clear legal quality"; it was simply not desired for the minority clause to assume "a clear binding force and an internal dimension" (Toggenburg 2000, 17).

However, this omission has subsequently been addressed in Lisbon: Article 2 of the Treaty on the EU thus specifies the common values that are to be respected by any country wishing to join 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."[10] But these rights remain undefined, although the provisions do provide a set of expectations of appropriate behaviour. According to Article 7 of the Treaty on the EU, the EU can engage in a procedure to establish a "clear risk of a serious breach by a Member State" or even "a serious and persistent breach" of the values from Article 2 (FRA 2011, 18). These procedures can be activated by a third of EU member states, by the European Commission, and the first one (a clear risk) also by the European Parliament, whereas "the final decision determining a breach has to be taken by the European Council following consent of the Parliament" (*ibid*., 19). Sanctions (in terms of suspension of certain rights) can be imposed on a member state in cases of breaches, but this is ultimately a political decision and no application of Article 7 has occurred since its inception in 1999 (*ibid.*). Although this procedure can provide the basis for addressing inappropriate behaviour of an EU member state with regard to minority protection, it does not provide the basis for a regular monitoring as carried out by the EC during the accession process (i.e., before EU enlargement).

The *Charter of Fundamental Rights of the European Union* (2000) is silent on minority rights. It only mentions (national) minorities with respect to non-discrimination: Article 21 prohibits discrimination in the enjoyment of other human rights on the basis of, among other criteria, membership of a national minority, race, language, religion, and ethnic origin,[11] but fails to formalise any specific minority rights. According to its Article 22, the "Union shall respect cultural, religious and linguistic diversity". The Charter has failed to establish "convincing provisions on unofficial minority languages",[12] although the EC was convinced that "the rights of minorities are among the principles which are common to the Member States", and that those principles "were solemnly reaffirmed in the Charter", in Articles 21(1) and 22.[13] Of course, principles are not the same as rights and the prohibition of discrimination is not the same as 'positive' rights of persons belonging to minorities, as laid down in the FCNM.

Such modest references to minority protection, without any specified substantive minority rights (such as the right to use minority languages, or the right to participate in decision-making processes), demonstrate that the EU has been overwhelmingly concerned with implementation of minority rights elsewhere, not internally. This external focus and the absence of addressing similar issues internally were subjected to severe criticism very early on (de Witte 1993). In practice, the EU used the CoE's norms on minority protection in order to check if EU candidate countries met the Copenhagen political criterion of minority protection. A positive opinion by the EC on meeting the criterion was

required for a country to be eligible to become an EU member. Accordingly, all ten states that joined the EU in 2004 (but also others that are not analysed here) met the conditions. But this state of affairs, particularly the conditionality with respect to minority protection in the process of EU enlargement on one hand and no substantive minority rights in the *acquis* on the other, certainly raises some questions about the EU's credibility as an actor in the issue-area of minority protection. Furthermore, it brings into question the impact of such conditionality in the form of actual benefits for persons belonging to minorities.

4. Respect for and Protection of Minorities in Practice

4.1 Methodology

The empirical part of this paper is based on a comparative analysis of ten new member states in terms of how they have met the Copenhagen political criterion of minority protection. This assessment is based on the analysis of two core primary documents for each country. First, the state of affairs in minority protection is analysed on the basis of the most recent EC progress report; in this the EC established whether a country had met the criterion of minority protection. In those reports, the EC also listed open issues that were yet to be dealt with after the enlargement, if there were any. Second, the state of affairs in minority protection in the ten states is studied a decade later, with a view to establishing as to whether or not the expectations of the EC about addressing the remaining open issues have been fulfilled, and analysing sustainability in practice of the EU conditionality in the issue-area of minority protection. This assessment is based on a detailed analysis of the most recent resolutions by the Committee of Ministers (CM) of the CoE, which, together with the independent Advisory Committee (AC), is entrusted with monitoring powers under the FCNM. Those resolutions are based on opinions adopted by the AC, whereby the text of the resolution is much shorter but the wording is expected to strictly follow the wording in the AC's statements of opinion. The time frame for the analysis of individual countries is determined by the last EC reports and the most recent inter-governmental assessment of implementation of the FCNM by the CM, based on the independent assessment by the AC. On the average, the period covered by the analysis of case studies (ten new member states) is ten years (see Table 1 below).

There are at least three reasons for this kind of analysis. Firstly, the EC does not supervise EU member states when it comes to the so-called Copenhagen political criteria including minority protection. Its monitoring powers, and thus also any direct impact on the process of conditionality, terminated with the enlargement (except in possible extreme cases under Article 7 of the Treaty on the EU). The EU has therefore stopped publicly monitoring minority protection in those countries (as EU members) and in order to analyse any changes in minority

protection in the decade after the enlargement, one needs to refer to other monitoring mechanisms. The scope and the level of minority protection could be established by an in-depth case study of minority protection in each country. For the purposes of this research, however, the conclusions in the last stage of the most recent monitoring cycle under the FCNM in the form of the CM resolutions, will suffice. This enables a comparison between the findings of two international bodies entrusted with monitoring minority protection in individual countries.

Secondly, all ten countries are state parties to the FCNM and they are therefore legally bound to implement the FCNM norms, which were used as the normative framework for regular assessments and progress reports of the then EU candidates by the EC in the field of minority protection. Accordingly, implementation of minority rights in the FCNM is simultaneously also an indication about the level of implementation of the EU condition on respect for and protection of minorities.

Thirdly, resolutions are adopted by an inter-governmental body – the CM. Therefore, it can be assumed that they represent an agreement of state parties about the problems, open issues and progress made with respect to minority protection in individual state parties to the FCNM. The majority of resolutions analysed for the purposes of this research are from the third monitoring cycle, with exceptions in the cases of Lithuania and Poland, which have completed the second cycle, and Latvia, which has completed only the first cycle due to its late ratification of the FCNM. Importantly, CM resolutions are based on recommendations (in the form of opinions) by the AC, composed of 18 independent experts who prepare their opinions based on broad consultation (including direct consultation with local stakeholders during country visits) with minorities, the civil society and governments. Those resolutions can be therefore understood as corresponding to the actual issues on the ground as perceived also by minorities themselves. Because the AC's opinions are much more comprehensive and cover more issues, the empirical analysis is occasionally supplemented by those opinions, namely in those cases where the analysis of an EC final report and a CM resolution for a particular country reveal a notable gap.

The empirical research of minority protection in the ten EU countries, based on a comparison between the last EC progress reports and the most recent CM resolutions, is organised according to a number of substantive issues. This analysis has been divided into six categories: minority recognition; protection and promotion of minority identity; specific minority-related issues; minority representation; the Roma; and remaining open issues and problems. These substantive areas cover the broadest spectre of minority-related issues that can be perceived as problematic in the sense that minority expectations are met with the conflicting interests, sometimes even values, of the dominant identity group, which may lead to a complete or partial failure to implement the FCNM norms.

Those conflicting interests between (persons belonging to) minorities and governments (who typically follow the expectations of the dominant identity group) occur, firstly, with respect to the very recognition of minorities. States can ignore minorities altogether, they can ignore some minorities, or they can recognise minorities based on some identity markers (e.g., religion), whilst ignoring other identity markers (e.g., language, culture) that are also important for persons belonging to minorities. Secondly, conflicts occur with regard to how minority identity is promoted and protected. The expectations and desires of persons belonging to minorities can differ significantly from the willingness, and sometimes the potential influence, of those minorities' home-states. As most of these ten countries are young democracies that have gone through the period of transition, some even through the process of state-formation typically accompanied by intensive nation-building, the third category in the empirical research refers to the so-called specific issues. These include, but are not limited to, the issues of citizenship, discrimination, or the role of a country as an active kin-state to its co-national minorities living in other countries (Huber & Mickey 1999).

Fourthly, if secured, minority representation and effective participation of minorities are an indication that minority protection has been carried out according to the international normative framework. Of course, minority representation is not in itself a guarantee that all minority rights can be enjoyed to the full satisfaction of persons belonging to minorities, but it improves their chances of sharing in decisions on matters that concern them, and it is a sign that the dominant identity group recognises other identity groups that should share in decisions on identity-related matters that are very often assumed by the dominant identity group as its exclusive domain of interest.

The fifth category is solely devoted to the Roma as this non-dominant community is both a social and an ethno-national minority. It has no kin-state, it is typically recognised as a national minority to be protected under the FCNM, but it is also a non-dominant community that typically suffers from discrimination and lack of access to basic human rights, including the right to shelter, drinking water, social security, health security, education, and employment. Such special socio-economic problems and negative stereotypes and racism, which are faced by the Roma in many countries, are listed separately to address the dual minority status of this national minority, whereas any identity related issues, such as protection of their language, are analysed in the second substantive category (protection and promotion of minority identity).

The sixth category is devoted to problematic issues and recommendations for urgent and/or long-term actions as identified both by the EC at the end of the pre-accession Europeanisation process, and by the CM some ten years later. This way, it is possible to observe any progress with respect to the most urgent issues, as well as the most obvious results of the process of Europeanisation in

the field of minority protection. Two caveats appear to be in order, however. Firstly, this analysis does not include any changes that were made during the conditionality phase when the incentive of EU membership was most apparent and the candidate countries may have behaved instrumentally when they sought primarily to fulfil the criteria, rather than to protect minorities. Secondly, state approach to minority protection is not solely a result of international incentives such as EU membership or recognition. It can be a result of internal changes and other factors. But before any such further research on causality mechanisms is carried out, it is both useful and necessary to analyse the state of affairs in greater detail.

4. 2 Empirical Evidence

The following Table offers a schematic presentation of the empirical evidence from an in-depth content analysis of two sets of primary documents adopted with respect to minority protection in the ten EU members (Table 1). Although these countries are very diverse in several respects – including their territorial and demographic size, historical experience with state-formation, ethno-national composition, size and a number of minorities, the existence or lack of kin-states, and their approach to securing the well-being of their co-national minorities abroad – their minority protection in many ways remains unsatisfactory.

There is an overall lack of any substantive progress in terms of addressing the remaining open issues. In contrast to EC expectations, in some cases post-enlargement legislative changes have led to lower level of minority protection. For example, new language legislation in Slovakia (2009) and Estonia (2011) upheld nation-building politics and was typically adopted without minority consultation. Progress that can be directly linked with the EC expectations occurred with regard to ratification of the FCNM. Although late, Latvia eventually ratified it in 2005 – three years after the EC had again asked it to do so, and a year after it had become an EU member state. Further positive steps in terms of removing the problematic issues from the agenda can be seen in the cases of Estonia (the issue of minority identification), Hungary (the status law on ethnic Hungarians as minorities, which lost its relevance also due to the next enlargement, particularly with regard to Romania) and the Czech Republic (the use of minority language, which the CM no longer saw as an issue of immediate concern). In all other cases and with respect to all other issues, however, the situation is either the same or has worsened in the meantime.

The issue of minority recognition has been observed in five countries (Cyprus, Estonia, Latvia, Poland and Slovenia), but there is a notable inconsistency between the two institutions. Only with respect to Cyprus was the same problem identified by both the EC and the CM: there are still no national minorities, only religious groups, and persons belonging to the Maronite, Armenian and Latin (Roman Catholic) communities can still only identify

Table 1: Assessment of minority protection by the EC and the CM

STATE	↓Last Eur. Comm. (EC) Report	**Minority rights and the protection of minorities – issues** YES = an issue (a problem) mentioned in a document YES + = (some) progress with respect to an issue YES – = the problem has worsened YES ° = an issues mentioned, as a matter of information NO = no issue discussed				
	Last Comm. of Min. (CM) Resolution (cycle)	**Minority recognition**	**Better protection and promotion of identity (e.g. language rights)**	**Solving a specific minorityrelated issue (e.g. citizenship, discrimination)**	**Minority representation**	**Roma**
Cyprus	EC 2002	YES	YES	YES (effective control)	YES	NO
	CM (3rd) 2011	YES	YES	YES (effective control)	YES	YES
Czech Republic	EC 2002	NO	YES	NO	NO	YES
	CM (3rd) 2012	NO	NO	NO	YES	YES –
Estonia	EC 2002	YES	YES YES + (language law)	YES (naturalisation)	NO	NO
	CM (3rd) 2012	NO	YES YES – (language law)	YES (naturalisation)	YES	NO
Hungary	EC 2002	YES °	NO	YES ('status law')	YES + (locally)	YES (modest progress)
	CM (3rd) 2011	NO	YES (financial crisis)	NO	YES (nationally)	YES (severe problems)
Latvia	EC 2002	NO	YES YES – (language)	YES (FCNM, integration)	YES +	NO
	CM (1st) 2011	YES + (non-citizens)	YES YES – (funds)	YES + (FCNM) YES (integration)	YES	YES
Lithuania	EC 2002	NO	YES	NO	NO	YES
	CM (2nd) 2012	NO	YES	YES (language)	YES	YES
Malta	EC 2002	NO	NO	YES (discrimination)	NO	NO
	CM (3rd) 2014	NO	NO	YES (discrimination, racism)	NO	NO
Poland	EC 2002	NO	NO	NO	NO	YES
	CM (2nd) 2012	YES (Silesians)	YES	YES (reciprocity for minority protection)	YES	YES
Slovakia	EC 2002	NO	YES	NO	NO	YES
	CM (3rd) 2011	NO	YES	NO	YES	YES
Slovenia	EC 2002	YES (autochthon-nous Roma)	YES + (It. & Hung.)	NO	YES + (Roma) YES (registration)	YES
	CM (3rd) 2012	NO	YES (new minorities, Germans)	YES + (the 'erased' – being addressed)	YES (Roma)	YES

Sources: EC reports and CM resolutions, all fully listed in the list of sources below.

Final conclusion by the EC/Further recommendations by the CM
"The Commission has repeatedly concluded that Cyprus fulfils the political criteria." (p. 23)
(Self-)identification; discrimination; educational needs; the Roma situation and rights; awareness raising; minority culture.
It fulfilled political criteria already in 1997, has made further progress, but "more structural measures are needed to achieve significant results in remedying discrimination" of Roma; needs to adopt "comprehensive anti-discrimination legislation" (pp. 33-4).
Roma employment, living conditions, access to education; bilingual signs and place-names; curriculum; Roma (including women) participation in decision-making.
It fulfils the political criteria, but it should further integrate non-citizens (remove language barriers), speed up naturalisation, implement language legislation based on "justified public interests and proportionality" (p. 34).
Effective consultation on integration; the media (stereotyping, minority languages); language issues; intercultural curricula, bilingual education; ethnic favouritism in labour market.
It has been fulfilling political criteria since 1997, but: problems with unintegrated Roma policy; ongoing discrimination of Roma; calls for a revision of Roma policy with a long-term strategy and comprehensive anti-discrimination.
Stereotypes, hate speech; the media (mutual understanding, respect); support minority cultural activities, observe Roma needs; public TV (minority language programmes); shortcomings of Roma children in education.
It has been fulfilling the political criteria since 1997, but integration of non-citizens (naturalisation and language training) to be accelerated and sufficiently funded; all aspects of language law implementation to respect "the principles of justified public interest and proportionality" (p.35).
Language based discrimination in the economic sphere.
It has been fulfilling the political criteria since 1997.
A consistent legal framework; culture and minority identity promotion; effective implementation of the right to use minority languages; language barriers to employment; respect minority needs in education; further participation in public life.
It continues to fulfil political criteria.
Intolerance and discrimination, human rights to all; full respect of human rights of third country nationals (better social cohesion); long-term information strategy on attitudes towards them.
It has fulfilled the Copenhagen political criteria since 1997.
Racist offences, intolerance, xenophobia; minority consultation and full participation in 2011 census; promotion (with funding) of minority culture; discrimination and social exclusion of Roma; work with them; "to establish a dialogue" with groups wishing to be protected under FCNM; minority participation in the media; review textbooks with minorities for "a more objective reflection" of minorities.
In 1997 and 1998, it did not fulfil the political criteria. It only fulfilled them in 1999 and continues to do so, but efforts to protect minorities to continue, particularly "to effectively combat discrimination and improve the living conditions of the Roma." (p. 33); to adopt comprehensive anti-discrimination legislation.
Legislation on minority protection (use of languages); intolerance, promotion of mutual understanding; segregation of Roma children; ensure "substantial and lasting improvement" of overall Roma situation; minority cultures, in consultation with minorities; laws on minority protection and financing; minority access to the media; more flexible numerical conditions for use of minority languages in the public sphere; support for minority language teaching; inclusive textbooks; minority participation in public administration and law-enforcement.
It has been fulfilling political criteria since 1997 when the EC first concluded as much..
Roma housing, access to education, discrimination; culture and language protection; inclusive and retroactive access to permanent residence for "The Erased"; non-discrimination for other group members, their identity preservation; intolerance and hate speech; better minority teacher training and teaching of Romani; more effective minority participation.

as belonging to either the Turkish Muslim or Greek Orthodox community.[14] In Estonia and Slovenia, only the EC reports noted an issue with regard to minority identification, whereas the most recent CM resolutions did not. However, additional analyses of independent AC Opinions[15] reveal that the same issues (the problem of citizenship in Estonia and the issue of minority protection for the Roma being limited to their autochthonous settlement in Slovenia) persist, but the CM has not mentioned them in its resolutions as those were not among the most pertinent problems. In some cases, new issues with regard to minority recognition and/or identification have appeared. In Poland, the CM observed a lack of dialogue with members of the Silesian nationality and Silesian speakers,[16] whereas in Slovenia, the CM resolution mentions new minorities (Slovenia's citizens – persons belonging to former Yugoslav nations).[17] Latvia was the only country where the CM was satisfied with the inclusion of non-citizens in the personal scope of the FCNM (an issue not observed by the EC).[18]

State approaches to minority identification do not appear to have been affected by Europeanisation. The EC specifically identified only the issues of citizenship (Estonia, Latvia), a narrow and inadequate minority identification (Cyprus) and autochthonous settlement as a condition for Roma rights (Slovenia). Except in Latvia, those problems persist, as well as other minority-identification issues as observed by the CM. Nation-building, with policies on recognition and promotion, or a lack thereof, of different identity groups, has been largely carried out regardless of Europeanisation.

This trend can also be observed with respect to the protection and promotion of minority identity. This issue was not exposed by either body only in Malta (as it officially has no minorities, a position that has been regretted by the AC[19]). In the Czech Republic, the problem with the use of minority language as mentioned by the EC was no longer mentioned by the CM. In all other cases, however, the same issues were observed by both bodies. In some cases (Cyprus, Slovakia), the CM observed more problematic issues than the EC a decade earlier, whereas in Poland, the EC report was silent, but the CM resolution pointed at a number of problems (insufficient funding for cultural projects to protect minority identity, insufficient broadcasting in minority languages, fewer minority speakers to receive education in their mother tongue and few opportunities at the municipal level to use minority languages in the public sphere).[20]

In Hungary, a new contextual factor (the economic crisis) led to fears by minorities that their activities to protect their identity would be affected by budgetary cuts, and the CM also observed problems with minority broadcasting.[21] In Estonia, the EC and the CM disagreed on the impact of the same language law, with the EC describing it positively, and the CM seeing its negative consequences on the use of minority languages. Similarly, in Slovenia, the EC mentioned comprehensive minority protection for the Italians and Hungarians, but the CM

resolution nine years later pointed at a number of open issues faced by other groups (new minorities, the Germans).[22]

The limited effects of the Europeanisation can be also observed with regard to specific open issues. Although these are very diverse, the least change has occurred with regard to the issues that occurred in the context of state-formation and nation-building, with slow and limited naturalisation being most resilient to any change. In practice, non-citizenship has not been applied very strictly as an obstacle to minority rights, but in legislation countries like Estonia or Latvia have listened to the same recommendations for more than a decade. Even problems with discrimination (Malta) persist, and the EC's clearly formulated expectations were repeated by the CM in 2014. Notably, the EC did not mention a human rights violation of "the Erased" in Slovenia that was duly noted by the CM (well ahead of the Grand Chamber's final decision[23] on the matter). Poland's reciprocity with regard to minority protection was also only picked up by the CM. Poland stands out as the country where the EC and the CM lists of issues differ most: the EC hardly observed anything, whereas the CM reminded Poland of a number of open issues yet to be addressed. Indeed, the CM has established itself as a body with a higher standard of approval of minority protection. To meet the Copenhagen criterion on minority protection, the EC required neither a comprehensive anti-discrimination legislation where it was needed nor effective efforts to combat discrimination (the Czech Republic, Hungary, Slovakia). Even in cases where the EC saw the problems, those have largely persisted. The countries fulfilled the explicit demands by the EC in cases of some rather quick (legislative) solutions (e.g., Latvia's ratification of the FCNM).

The EC and the CM also largely differ on the issue of minority representation and effective participation of minorities in decision-making processes: the EC made a comment on this issue only in four cases (Cyprus, Hungary, Latvia, Slovenia), whereas the CM commented on the matter in all cases except Malta (officially without minorities). In Hungary and Latvia, the EC observed some progress, but the CM pointed at problems. Where the EC and CM discussed the same issues, those have not improved (Cyprus, Slovenia). The empirical evidence therefore suggests that this is an issue to which the EC did not pay sufficient attention given its importance under the FCNM. Instead of providing for directions in the process of Europeanisation towards better minority representation and participation, the EC may have legitimised the *status quo*, particularly where it noted progress on minority representation locally (Hungary), whilst ignoring the ongoing problem of their insufficient representation nationally (as observed by the CM nine years later).

With respect to the Roma who struggle with their double minority status (as a social and as an ethno-national minority), there is a widespread lack of progress. The same problems were observed by the EC and the CM a decade later. In two cases (Cyprus, Latvia), the EC remained silent on the problems of

the Roma, which were fully revealed by the CM a decade later. The EC noticed severe problems in 2002 in many countries: widespread discrimination and violence (the Czech Republic, Hungary), difficult conditions and a difficult social situation (Lithuania, Poland), insufficient integration and victims of violence (Slovakia) and social inequalities and discrimination (Slovenia). Still, all these problems were not dealt with as part of the necessary Europeanisation before the enlargement. Roma elsewhere face the same problems, and the EC was satisfied with candidates' strategies and intentions, rather than with an actual change in terms of non-discrimination and equal human rights for the Roma in the then EU candidates. Not surprisingly, Europeanisation has not brought about any notable progress for the Roma. On the contrary, as explicitly observed by the CM for the Czech Republic, the situation has worsened.

The lists of further recommendations for all countries strengthen the argument about very limited Europeanisation in the field of minority protection. The issues of immediate and long-term concern are about guaranteeing basic minority rights, in some cases about preventing discrimination. The EC also deemed it unnecessary to add any further recommendations for Cyprus (where it missed the Roma), Lithuania, Malta, Poland and Slovenia. In its report on Malta the EC noticed a need for a comprehensive anti-discrimination, but – as opposed to the Czech Republic or Slovakia – this was not mentioned in its overall concluding remarks as required changes.[24] The lack of comprehensive anti-discrimination legislation as a further recommendation for the Czech Republic and Slovakia was not a sufficient reason to press the states to resolve the matter before the enlargement. The issues have persisted. Similarly, the EC was satisfied with minority protection in Poland and Slovenia, but the recent CM resolutions express serious concerns with regard to the Roma community in both countries. Those did not occur overnight and they at best disclose the missed opportunities by the EC during the enlargement process. Such issues could have been addressed, if only by following the logic of consequences, with a hope that the logic of appropriateness could follow suit.

5. Conclusion

The developments with regard to minority protection in the decade after the 2004 enlargement suggest that Europeanisation has not run deeply enough to change values and consequently policies – either in the new member states or in the EU. With its appeal and normative power (Manners 2002) the EU sought to uphold respect for and protection of minorities elsewhere, in new states and in states wishing to join the EU. But its first opportunity in the process of state recognition was missed when individual EU member states (Germany in particular) adopted a joint EU approach. State recognition happened regardless of insufficient minority protection. This problem was eliminated when the EU institutionalised

its approach to Europeanisation during the process of its enlargement. The EC monitored, on behalf of the EU as a whole and of its member states, progress by the candidates on meeting the Copenhagen criteria, including minority protection. However, the EC's standard of approval for meeting this condition was very low, and Europeanisation was interpreted narrowly and unequally across the candidates.

This meant that nation-building could continue, and the same issues and problems that minorities are facing have persisted. Minority issues that obstruct the process of strengthening the dominant title-nation are particularly resilient. The empirical evidence in the issue-area of minority protection is overwhelmingly worrying: not much has changed to the better in the past decade. Such a lack of progress across different sets of issues raises a number of questions: was the EU too satisfied too soon, too ignorant or too group-oriented when it went along with the EC's observations that candidates had fulfilled the Copenhagen political criterion on respect for and protection of minorities? With respect to the newcomers, what was the actual extent of Europeanisation?

In the issue-area of minority protection, there has been hardly any deep socialisation in these countries. The logic of consequences and the EU-driven approach have led to some unintended consequences: as (sometimes new) legislation on minority protection was mostly sufficient for meeting the Copenhagen criterion, the countries did not have to change their attitudes towards minorities and it was only a matter of time when these would be expressed through new-old policies, in some cases policies that seek further to protect a dominant nation, rather than non-dominant minorities (e.g., citizenship or language issues in Estonia, Latvia, Slovakia). Insufficient support for minority efforts to protect their special identity has also been observed in other states, including Poland, where the EC hardly saw any problems in this respect (except for the difficult situation of the Roma).

The observed discrepancy between the EC's and CM's interpretations of minority protection, both referring to the same normative framework of the FCNM, partly explains the very limited impact of Europeanisation. The CM, after several rounds of monitoring, typically sees more open issues than the EC in its final progress reports. The EC thus missed an opportunity to be more thorough in its assessment of minority protection. At the very least, the logic of consequences could have been used for cases of discrimination (very much in line with the *acquis*). But for the EC to follow a tougher interpretation of when the criterion of respect for and protection of minorities has been fulfilled, the EU would probably need to be a more credible and legitimate actor in the issue-area of minority protection. The perception of double standards, based on the EU's approach to minority protection for external use, and the ongoing lack of any substantive internal norms on minority protection, have most likely contributed to a weak understanding of minority protection by the EC and the EU.

To raise its credibility and legitimacy, the EU would need to discuss minority issues sooner than it may itself wish – not just because minorities are yet again at the centre of illegal and illegitimate state-formation in the case of the Crimea, but also because nation-building is very much an ongoing process and has been recently strengthened in countries like Hungary, Spain and the United Kingdom. The EU will need to discuss minority issues not just because all the gross violations of human rights of many persons belonging to the Roma or unrecognised minorities in Europe need to stop, but also because the referenda across Western Europe, which are very closely monitored elsewhere (in Republika Srpska, among others), are yet again putting the issue on the agenda: which rights for which groups? It may no longer be sufficient to ignore minorities and minority rights at the EU level and agree that this is a matter to be dealt with by individual states, for it is within those states that some groups are not satisfied. What is therefore needed, in addition to the full implementation of minority rights, is a process that can be termed as Europeanisation reversed[25] – a process that would pave the way for necessary normative changes in the EU itself, with a hope and expectation that some substantive changes can be also felt by non-dominant groups across EU member-states.

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Notes

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[2] *Opinion No. 1 of the Arbitration Commission of the Peace Conference on Yugoslavia*, at 1.e.

[3] *Opinion No. 2 of the Arbitration Commission of the Peace Conference on Yugoslavia*, at 2.

[4] *Opinion No. 5 on the Recognition of the Republic of Croatia by the European Community and its Member States*, at 3.

[5] *Conclusions of the Presidency*, Point 7/A/iii, para. 2.

[6] See *Special report No 12/2000 on the management by the Commission of European Union support for the development of human rights and democracy in third countries, together with the Commission's replies*, at 2. The EU continues to finance projects on promoting human rights and protecting minorities in the Western Balkans, with a view to helping those countries meet the political criteria for membership (the project call can be accessed at http://ec.europa.eu/enlargement/pdf/financial_assistance/ipa/2011/pf_1_ipa_2011_human_rights.pdf, 15 October 2014).

[7] Indeed, there have been "some indications that candidate State Governments have viewed their efforts to demonstrate compliance with the political criteria instrumentally, rather than as a genuine and permanent commitment" (Open Society Institute 2002, 17).

[8] Answer given by Mrs Reding on behalf of the Commission (15 May 2001), para. 2.

[9] *Consolidated version of the Treaty on European Union* (Amsterdam Treaty, 1997/99).

[10] *Consolidated version of the Treaty on the European Union*.

[11] The EU's focus on prevention of discrimination has been reflected in the *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*.

[12] Jean-Marie Dehousse, Belgian socialist Member of the European Parliament, 4 October 2000 (*How the Charter was drawn up – sound bites. Some examples of the controversies encountered while drawing up of the Charter of Fundamental Rights of the European Union*).

[13] Answer given by Mr Vitorino on behalf of the Commission (19 June 2002).

[14] EC Report on Cyprus (2002), CM Resolution on Cyprus (2011).

[15] AC Opinion on Estonia (2011), AC Opinion on Malta (2012), and AC Opinion on Slovenia (2011).

[16] CM Resolution on Poland (2012).

[17] AC Opinion on Slovenia (2011).

[18] CM Resolution on Latvia (2011).

[19] AC Opinion on Malta (2012).

[20] CM Resolution on Poland (2012).

[21] CM Resolution on Hungary (2011).

[22] EC Report on Slovenia (2002), CM Resolution on Slovenia (2012).

[23] *Case of Kurić and others v. Slovenia* (Application No. 26828/06), 26 June 2012.

[24] EC Report on Malta (2002).

[25] I am thankful to Anna Leander for pointing this out at the Central and East European International Studies conference in Cluj, Romania, in June 2014 .