

NEW CHALLENGES FOR THE TRADITIONAL MINORITIES IN EUROPE

by MEP Csaba Tabajdi

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

Strasbourg, 16th of November 2006

I. Does the European Union have a minority policy?

1. After the end of the divided Europe and the beginning of the transition the Council of Europe adopted two legally binding documents (the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages), what most Council of Europe member states have ratified. The Council of Europe established a well functioning monitoring mechanism. The Council of Europe also has a **human rights ombudsman**, not specifically for minority rights, but the ombudsman can also deal with them. Therefore it is a crucial question, whether we should try to elaborate **on the EU level a new convention or make use of the Council of Europe's existing documents and structures?**

2. **There are still no comprehensive standards concerning minority rights and minority protection mechanisms and monitoring in the EU.** The Copenhagen European Council in 1993 defined the political criteria that all applicants must meet before they could join the European Union. Namely, among other things, they must respect and protect minorities. This is a soft law, because the Amsterdam Treaty failed to integrate the minority rights contrary to the Copenhagen decision, and it is clear that there are no minority rights standards which would have been integral part of the *acquis communautaire*. Therefore, we welcome the draft of the **Constitutional Treaty**, which provides the criteria of respect for human rights including the 'rights of persons belonging to minority groups'. This would be the first legally binding reference on the minority rights in the history of the European Union. The adoption of the Constitution would be therefore a real historical turning point in the minority protection on EU level.

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

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

5. Several countries in Europe has failed to fundamentally reform their reserved approach to the minority issues. This is the main obstacle that stands in the way of elaborating a legally binding minority protection mechanism on the EU level. **Leading European countries** such as France or Greece **do not acknowledge the existence of minorities** as such, and refused to ratify the two legally binding instruments of the Council of Europe.

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

7. The enlargement of the EU by the 10 new Member States brings a challenge to the minority policy. Despite the fact that there are **no Community standards** in the EU, the Union was relatively consistent for monitoring the situation of national minorities in the applicant countries. The regular reports prepared about the situation of minority rights in the 10 new countries reflected this contradiction. The criticism formulated by the EU was **lacking a clear set of criteria and a consequent approach**. For example in the case of the Romanian monitoring reports, where findings relating to the situation of the Hungarian minorities in the October 2005 report were left out a year later, while nothing really changed on the ground

8. The EU finds itself in a "mouse-trap situation", because the accession criteria formulated in Copenhagen in 1993, as well as the monitoring process of the enlargement remains obligatory for the Member States. This means that the Member States may not ignore these level of requirements, but should respect them. We can observe an awkward situation: **double standards**. If we compare the minority rights in the 10 and the 15, we certainly come to the conclusion that the level of the direct protection of the rights of minorities in the new Member States is higher than in the EU-15. To a large extent, it is a consequence of the Copenhagen criteria and the monitoring process.

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

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

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

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

13. The paradox is that the successful minorities are those, who were **radical** and fought armed for their cause. The only exception may be the Swedish speaking Finns, since even in South-Tyrol there were incidents before granting the autonomy (destruction of energy

cables, bridges). Europe always appreciated and awarded those minorities, which stepped up violently.

14. Naturally, **radicalism and the use of violence** even for this just cause should be avoided at all costs. That is exactly why European Union and its Member States should seriously consider putting the minority issue to the European agenda for the sake of the stability and prosperity of the continent. With respect to this, here is a **list of tasks**, concrete and pragmatic measures we have to implement and fulfill in order to construct a truly functioning European minority protection system. It is of extreme significance to determine who will lead the actual fights, who will assume responsibility in this quest.

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

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

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

II. Major tasks on European level

1. We must work to revive the EU's **Constitutional Treaty** and to complete the ratification process, in order to have a legal basis for the elaboration of legal standards and protection mechanism for minorities on the EU level.

2. Clarification of the legal **nature of community standards**: according to the practice of the European Court of Justice full ratification of an international convention by all Member States is not required for the convention to serve as a referential frame for EU standards. The *Framework Convention* - as part of the Copenhagen criteria - can therefore be regarded as a legal reference and a guideline in the European Union context. The recent enlargement has served as a key instrument for assessing compliance with EU requirements.

3. Clarification of the difference between **equal treatment** and **preferential treatment** is needed.

4. Clarification of the notions of **autonomy, subsidiarity, devolution** and **self-governance** as basic tools for the development of the national minorities is also vital.

5. The EU has to continue the efforts to **monitor** the situation of national minorities in the Member States. As this is not done properly within the architecture of the EU, we have to rethink the role of the existing structures (the European Commission, the European Parliament, and also the Intergroup). The European Parliament has to be more active in the monitoring of minority rights in the 25 Member States. The setting up of the **Fundamental Rights Agency** is a top priority in the near future.

6. Exploring **new forms and ways of cooperation** to the field of minority protection: **Enhanced co-operation** within EU framework: Hungary, Finland, Austria, Italy or Slovenia could all play a leading role in this cooperation. These countries have the best practices in the Continent and they can be examples for the other states.

7. Linking the **European Union with the Council of Europe – better co-operation** in order to avoid the wasteful parallelisms: the Council of Europe has two legally binding instruments for the protection of minorities and minority or regional languages: the **Framework Convention** for the Protection of National Minorities and the **European Charter** for Regional or Minority Languages. Both have an effective control mechanism. **The Charter and the Framework Convention should be integrated into the European Union's Charter of Fundamental Rights.**

8. There is a need to ensure the **proper representation of the regional and national linguistic minorities in the European Parliament.**

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

10. A **Fund** should be established for supporting the endangered languages

11. The application of **double standards** between the old and new Member States needs to be avoided.

12. The proper harmonisation of the **anti-discrimination legislative framework** is needed. It is feared that the extension of the notion in the non-discrimination directive would have a negative impact on the special protection of minorities. If citizens of other countries belonging to the same language community can use the special minority linguistic regime, it can lead to the fact that the states will be much more reserved to give special minority rights. After the Court's decision, there is real danger that the non-discrimination clause would be extended as in the case of the special linguistic regime.

13. We must differentiate between the traditional national or **autochthonous minorities** and the new, **immigrant minorities**. Both groups need a legal protection and regulation on the European level, but should be treated separately, for their problems largely differ. Therefore, elaboration of a **set of standards for the new minorities**, where civil liberties must be granted naturally at the same level, but the state has different responsibility towards national minorities than new minorities.

14. An **additional protocol on cultural minority rights** should be added (most definitely on the issue of culture) to the European Convention on Human Rights in the framework of Council of Europe. The possibility must be ensured for minorities with an **additional protocol to the European Human Rights Convention** to be able to turn to the European Court of Human Rights;

15. The growing jurisprudence of the Strasbourg based **European Court of Human Rights** illustrates, how issues related to minorities have also been raised under

- i. the right of family life

- ii. the freedom of religion
- iii. freedom of expression
- iv. freedom of association

The task is to **inform the public about the individual judgements**, which - in the framework of the precedent law - must be integrated into the 'toolbox' of the international minority protection .