ECMI
ISSUE BRIEF

● ● ● EUROPEAN CENTRE
● ● FOR
● MINORITY ISSUES

Convergence in European Policy Making: What do Article 15 (FCNM) and the EU Regional Policy have in common?

Tove H. Malloy

The European Centre for Minority Issues (ECMI) is a non-partisan institution founded in 1996 by the Governments of the Kingdom of Denmark, the Federal Republic of Germany, and the German State of Schleswig-Holstein. ECMI was established in Flensburg, at the heart of the Danish-German border region, in order to draw from the encouraging example of peaceful coexistence between minorities and majorities achieved here. ECMI's aim is to promote interdisciplinary research on issues related to minorities and majorities in a European perspective and to contribute to the improvement of interethnic relations in those parts of Western and Eastern Europe where ethnopolitical tension and conflict prevail. ECMI Briefs are written either by the staff of ECMI or by outside authors commissioned by the Centre. As ECMI does not propagate opinions of its own, the views expressed in any of its publications are the sole responsibility of the author concerned.

ECMI Brief # 23
European Centre for Minority Issues (ECMI)
Director: Dr. Tove H. Malloy
© ECMI 2010

Convergence in European Policy Making: What do Article 15 (FCNM) and the EU Regional Policy have in common?

Minority protection is expanding its focus from protection-only to protection-and-empowerment, or from a politics of identity to a politics of identity related interests. To most, minority protection means the idea that there are compelling reasons why members of ethnic, cultural, national, racial and linguistic minorities require certain special protection rights in order not to suffer assimilation, suppression or persecution. However, in the European context, minority protection has also come to mean a right to attain a decent life. A decent life means a good life. The notion of the good life is of course essentially contested. The problem of protecting the right to a good life is not therefore what is a good life? – but how do minorities achieve and enjoy what they consider a good life?

In the European minority rights regime, minorities are offered the opportunity to achieve a good life through the right to participation in public affairs. Participation in public affairs enables minorities to influence the democratic process to design frameworks that ensure a good life for all members of society. In other words, participation in public life is the means by which minorities can table their interests in a democratic manner because conceptions of a good life are defended through interests.

However, democratic participation of minorities is not effectively implemented in Europe. It is beyond this paper to address the numerous reasons why individual states do not implement the standard. Instead, it is argued that we may find opportunities for minority empowerment through democratic participation in the European Union (EU) economic instruments for regional development. But in taking this step towards empowering members of minorities through democratic participation in regional economic development, we encounter a number of

issues regarding the tool kit of concepts that is needed to make this process democratic. Participatory citizenship, social capital, de-essentialized inter-cultural dialogue, de-anachronized kin-state relations are among the issues relevant for a well stocked tool-kit.

Taking stock of trends in minority protection

In Europe the minority rights scheme grew as a result of conflict settlements and attempts to prevent future conflicts. We have come to agree that members of minorities should not be penalized as a result of conflicts between national states, and thus there were compelling reasons to protect the identity of members of what came to be known as national minorities. It was decided that minority identity meant culture and language. Hence, most minority rights focus on how to protect these. This was the case in the Minorities Treaties, and it became the major focus of the United

Nations (UN) system of individual minority rights. Culture and language are also the reason why we codify non-discrimination rights. In the Council of Europe minority rights have likewise focused on non-discrimination and individual human rights protecting culture and language.

However, when the EU entered the discourse, it did not initially bring any innovation to the fore. In its aim to prevent new conflicts in the enlargement states, the EU set conditions that followed the same pattern and indeed referred to the rights noted above. Moreover, as we know, the EU did not have any intention to apply these conditions internally. Later, however, the EU improved on this and codified non-discrimination rights across the board. This time it had a different purpose though, the EU was aiming at economic development.

So the trend in Europe has therefore been shifting from conflict prevention (after World War I) through human rights (after World War II) to conflict prevention (after 1989) through conditionality based on human rights (after 1993) to social inclusion through non-discrimination (after 2000) depending on which international mechanism was acting in the arena. The adoption and ratification of the reformed Lisbon Treaty in 2007 did not bring any promise of new standards but perhaps a hope for mainstreaming in EU policies.

Taking stock of concepts applied in the protection of minority identity

But if we examine these trends more closely in terms of the concepts that guided these trends, we find a slightly more nuanced picture. We find non-discrimination codified by almost every one of the mechanisms mentioned above, from the UN's Universal Declaration of Human Rights (1948) to the European Charter of Fundamental Rights and Freedoms (2000). Similarly, we find the right to culture in the UN's International Covenant on Civil and Political Rights (ICCPR) of 1966, Art. 27 as well as in the UN Declaration on the Rights of Ethnic or National, Religious and Linguistic minorities of 1992 (hereafter UN Declaration). The Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) of 1995 also protects the right to

culture and some would say the right to cultural autonomy. It protects the right to speak and learn your mother tongue, whereas the Language Charter seeks to protect not the right but the minority languages. However, in both the UN Declaration and the FCNM, we also find a new concept, namely participation. In the FCNM we find this explicitly in Art. 15 and implicitly in Art. 17. This is the beginning of the expansion of focus noted in the beginning. It has been largely neglected in the first years of the life of these instruments not by practitioners but by scholars. It is now increasingly becoming the focus of attention throughout the community of minority rights observers. Why this attention now?

The aim of the right to participation is not explicitly protection of the identity of minorities but empowerment of minorities as actors to self-protect through democratic dialogue, democratic co-management and democratic co-decision making. This is what Philip Allott calls "society self-creating." Allott argues that

… the process of social self-creating is as energetic and complex and dense and continuous as the process of life itself. Society is a self-creating structure-system for the socializing of desire and obligation and will and action through the mediation of value. And all such self-creating is the work of consciousness, using imagination and reason to generate society's self-creating words and ideas and theories and values. And all such self-creating struggle, as society struggles with all that it is and all that it is not and all that it could be.[1]

The right to participation thus does not guarantee the protection of one's culture and language. Rather, it promotes the right to become socialized while preserving one's culture and language, i.e. one's identity. According to Allott this is necessary because society self-creating involves a number of dilemmas, namely dilemmas of identity and power, dilemmas of will and order, and the dilemma of becoming. To mitigate these dilemmas society and law must go hand-in-hand.

Evaluating trends in protection schemes

Some have seen this trend. Sia Spiliopoulou Åkermark has noticed in February 2007 that there is a shift in the justification of minority protection towards democratic participation.[2] Åkermark bases her argument on the right to participation in Art. 15 of the FCNM and Art. 25 of the ICCPR. Will Kymlicka agrees with the general line of Åkermark's argument. However, he is very pessimistic that this shift is maybe not a shift but rather a discourse used by the international community when times are good.[3] When conflicts are looming standards become less democratic.

Basically, Kymlicka evaluates the internationalization of state-minority relations seen from the perspective of liberal multiculturalism. He criticizes this international process for not being able to implement liberal multiculturalism because the process fails on three accounts, (1) categorization of rights, (2) rights as conditionality, and (3) the purposes of rights. The first problem is exemplified in that international instruments address both generic rights and targeted rights, i.e. both human rights and special rights for national minorities and indigenous peoples. The second problem is exacerbated by the fact that international instruments are imposed on weak states and states in development, thus often states are simply not able to implement rights to the level of the conditions set in these instrument. The third problem is the problem of seeking to prevent conflicts with human rights while also wishing to open the democratic space for minority participation creates a dilemma. Instead of rewarding minorities for democratic participation, we reward them for belligerence. This problem is global but in particular acute in the European context.[4] Our handling of this dilemma is confused, almost schizophrenic, according to Kymlicka.[5] One may agree with Kymlicka even if he appears to base his argument on codified rights and not the opinions issued by for instance the Advisory Committee to the FCNM. Nevertheless, his point is taken that opening up the democratic process to militant minorities has resulted in rewarding violence over democratic means. Northern Ireland is one example.

Michael Keating has a purely political approach to conflict between minority nations and majorities that are forced to find ways to live together.[6] According to his view what is missing is a philosophy of co-operation that binds minorities and majorities together and gives them democratic rationale.[7] He is not arguing that he has found the panacea which fosters this philosophy but he holds that certain principles, such as respect for difference, suspending belief in old doctrines of sovereignty, and putting the state in proper perspective may get us part of the way. In short, standard setting is helpful for the emancipation of minorities but it does not ensure the empowerment of minorities in their own societies.[8] This is the Allott argument about the self-creation of societies.

However, one could take this further and argue for the empowerment of minorities through European Union (EU) integration, especially the EU's economic policies. The EU is increasingly becoming aware of the need to empower ethnic minorities and immigrants as well as national minorities. In the following, we concentrate on national minorities.

Article 15 of the FCNM

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Minority empowerment through participation

To understand what standards EU policies may promote, it is helpful to start with the standard in question. Article 15 of the FCNM provides a definition that assumes that national minorities should participate in democratic life, not only the part affecting them but also in mainstream society affairs. It does not state specifically political participation but

experts have analyzed this article and declared that there is no question that it also includes participation in political affairs.[9] Moreover, experts read this article to include inter-cultural dialogue as a permanent function of minority-majority relations. The Explanatory Report offers some further ideas of practical institutionalizing of the provision.

The method of interest here is the second one seeking to promote the need to include minorities in the preparation, implementation and assessment of national and regional development plans. This is where one begins to discern the link to the Regional Policy.

The Explanatory Report states five methods that are relevant for the implementation of the Article 15 of the FCNM:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- *involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;*
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels; decentralised or local forms of government.

Furthermore, the Advisory Committee has taken the stand that institutionalizing is clearly part of the implementation of this Article. Hence, full participation of minorities in public life includes political participation and permanent dialogue.

In addition, as noted, Article 17 of the FCNM is relevant to this argument. This Article provides for the right to network across borders and inter-regionally and internationally. Since most national

minorities live in border regions this provision is extremely important. The relations to the kin-state are vital for national minorities even if it is problematic from an international security perspective.

Article 17 of the FCNM

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

However, whereas the Explanatory Report argues that this is a provision to help minorities protect their identity, I would argue that it is also a politics of interest provision that may support Article 15 and the method of *preparation, implementation and assessment of national and regional development plans*. The reason for this is that minorities can use their kin-state relations as well as relations to other national minorities in a border region to identify opportunities for regional development. This has been empirically assessed in recent research on the social and human capital of national minorities in the Danish-German border region as will be discussed below.[10]

Minority empowerment through the Regional Policy

The area of EU integration policies where national minorities can participate in the *preparation, implementation and assessment of national and regional development plans* is the Regional Policy. This Policy is one of the building blocs of the Lisbon

Strategy which aimed at making the European economic area grow and reach certain targets by 2010. The 2000 European Council at Lisbon set the strategic goal for the EU of becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.

Adopting the Lisbon Strategy, the EU formulated a number of measures to facilitate the shift towards an information society, stimulate research and development and the creation of small and medium-sized enterprises (SME), take further measures to complete the internal market, ensure sustainability of public finance, and modernise the European Social Model by strengthening education and training, developing an active employment policy and modernising social protection.[11]

The specific Lisbon Strategy objectives were

- *To establish an **inclusive**, dynamic and knowledge based economy,*
- To produce accelerated and sustained economic growth,
- To restore full employment as the key objective of economic and social policy, and reduce unemployment to the levels already achieved by the best performing countries, and
- To modernize our social protection systems

The European Council at Lisbon considered that the overall aim of the Lisbon Strategy was to raise the employment rate from an average of 61 per cent in 2000 to 70 per cent by 2010 and to increase the number of women in employment from an average of 51 per cent in 2000 to more than 60 per cent in 2010. In March 2010, a European Summit agreed that goals had not been achieved and a new Strategy for 2020 was adopted. The employment goals were implemented through the Social Agenda which included programmes such as the Employment Guidelines and the Open Method of Co-ordination, both of which are measures that could empower immigrants and ethnic minorities. In fact, including minorities in these programmes is legally based in the Treaty of the European Community Article 13. However, our concern is with the first objective of

the Lisbon Strategy, the objective to establish an *inclusive*, dynamic and knowledge based economy. Here national minorities in border regions can participate and have participated even without codified rights to participation.

Notwithstanding the alleged failure of the Lisbon Strategy, the Regional Policy motors on for another three years at least. The purpose of the Regional Policy is to show solidarity and remain competitive.[12] It is designed to bring about concrete results, furthering economic and social cohesion and to reduce the gap between the development levels of the various regions. From a scientific perspective, the Regional Policy is supposed to bring added value to actions on the ground. The Policy finances concrete projects for regions, towns and their inhabitants with a view to create potentials so that the regions can fully contribute to achieving greater growth and competitiveness.

Regions are divided into four categories of current level of growth that correspond to two objectives of the policy (see Table 1 appended). The first objective, the "convergence objective" is to promote growth-enhancing conditions and factors leading to real convergence for the least-developed regions whereas the second, the "regional competitiveness and employment objective" aims at strengthening competitiveness and attractiveness, as well as employment. This latter objective follows a two-fold approach. First, development programmes will help regions to anticipate and promote economic change through innovation and the promotion of the knowledge society, entrepreneurship, the protection of the environment, and the improvement of their accessibility. Second, more and better jobs will be supported by adapting the workforce and by investing in human resources. The need to develop regions is therefore a vital aspect of the EU's attempt to improve outlying regions according to the Lisbon Strategy goals. The fact that many of these regions are home to national minorities makes this area of EU integration policies interesting from a perspective of empowering minorities. Table 1 indicates which regions are relevant from this perspective.

The argument that regions and their national minorities are part of the overall EU integration strategy is actually not new. Michael Keating and

John Loughlin noted in 1997 that historical and ethnic regions which are culturally distinct from the majority of a national state have attempted to develop models of regional economic development based on the competitive advantage that their cultures may have in comparison to other European regions.[13] The regions that Keating ad Loughlin referred to then were by and large autonomous regions in Western Europe, such as Catalonia, the Basque country and Scotland. These regions experienced movements of cultural promotion linking up with ideas of economic development. This Keating and Loughlin argued

… attempts to preserve features such as the regional language and culture while at the same time providing both sufficient employment for young people and a rich cultural life for the inhabitants of the region and those whom it hopes to persuade to invest in the region.[14]

Keating went on to develop this idea into his theory "new regionalism" in 1998.[15] This theory does not address national minority empowerment *per se* but shows that in the new competitive drive among regions in the EU to develop economically is closely linked to the presence of national minorities in these regions. His theory argues that development strategies at the regional level are modernizing and forward-looking as opposed to the older tradition of provincialism that resisted change and defended traditions. Territories are being redefined and reconstituted on a broader view than that of the traditional national state outlook. Pressures from above and below are forcing regions to reassess their function. A functional pressure imposed by changing international markets and European integration is redefining the role of the regions as well as the socio-economic space of regions.

And Keating explains this development. The increasing importance of the region as a self-identifier as opposed to the traditional national state identification has implications for the future of regional politics as well as inter-regional and co-regional politics. Mechanisms are developed to deal with the changing global outlook of the economic and cultural landscapes. These mechanisms pay attention not only to the promotion of local economic growth but also to the construction of identities,

territorial solidarities and territorially-based systems of action. In this scenario national minority cultures are revalorized and made more visible through information technology and dissemination of cultural production. The value of national minority cultures is therefore entering the sphere of European integration.

Keating specifically argues that national minority cultures become influential at the regional level in the political arenas where issues are framed, policies debated, decisions taken and resources allocated as well as in the competition for investment, markets and other opportunities as these aspects of regional life are less and less managed from the central level of the national state. In this system where the central state has lost monopoly, regions learn to relate directly to international regimes and the global market. As the competition at these levels is fierce, regions must define and redefine their competitive advantages and their success in exploiting these determines the future prosperity of the region. They must reconstitute their function not only in terms of economic management but also in terms of regional cultures and regional identities. The function of regions therefore becomes a laboratory where policy makers seek to maximize the capacity of their territory to compete by mobilizing local energies that are critical in the global economy.

Local synergies based on complex networks of public-private linkages are extremely important in shaping strategies, and regional authorities often become the intermediaries in this process. Especially in regions where several minority cultures and diverse values cohabit, the mobilizing of local energies requires institutional set up. Where national minority languages used to be seen as languages of the periphery, they are now given new status not only in educational systems but also as promoters of commerce and trade. Cultural heritage industries have emerged in an effort to improve tourism, and the search for historical referents guide regions towards modernization through the bridging of the past, via the present, with the future. This trend has founded itself on a social realist footing that represents regional life as culturally pluralist based on diversity and social conflict. In the light of the revalorization of regional and national minority cultures, this cultural production becomes an

important tool in the creation of modern regional identity as it abandons the provincial, antiquarian and often nationalist connotations and emphasizes modernization and globalization in terms of value pluralism. The management of regions wishing to exploit the presence of diverse cultures and languages therefore requires institutional action plans that involve a large variety of players.

Finally, Keating argues that collective action in the social space becomes a major force in the construction of regional profiles. The degree of associative life at the regional level as well as the impact of commercial and trade activities and the existence of regional mass media sustain the social space and frame issues in a regional perspective. Consultative bodies and multipartite institutions form an important function in this process. But it is important to note that these respond to separate constituencies. In order to be effective they must be supported by strong incentives from regional and central governments. This is particularly crucial to the redefinition of border regions. The basic argument here is that emancipation through rights is good but it is not enough. Effective participation is not feasible on the basis of rights alone.

Notwithstanding this, there are experts that see the feasibility of empowering national minorities only through law. According to Olivier de Schutter, 'there are no provisions in EU law providing for the participation of national minorities in public, social and economic life in the EU Member States.' Thus, 'under EU law, national minorities associations are not guaranteed a right to participate in public decision-making, or to be consulted.'[16] According to this argument, there are only two ways in which the EU could play a future role in the protection and promotion of minority rights. One way would be to monitor more directly through the EU Fundamental Rights Agency whether member states comply with the provisions of the FCNM and the Language Charter. The other way would be to adopt new legislation which implements the values of the FCNM. Neither option is attractive to the legal expert as in the first case scenario this would duplicate the monitoring that the Council of Europe is doing through its Advisory Committee to the FCNM. In the second case scenario, the legal expert cautions us that even if new legislation would be treaty based, it would move the attention of member states away from the implementation of the FCNM, thus taking the same route as the anti-discrimination legislation imposed by the EU has done. According to this argument, the EU anti-discrimination directives actually prevent the codification of special measures for ethnic or cultural, religious or linguistic minorities.[17]

However, should one assume then that empowering national minorities through EU integration is a *non sequitur* because there is no legal basis for this? Is it not feasible that the economic approach to democratic participation that is offered by the Regional Policy could promote national minority empowerment? As Joseph Marko has noted in his commentary on Article 15, 'the best legal instruments for "effective participation" cannot "ensure" this goal if there is not a political climate and willingness of inter-ethnic dialogue and co-operation to give the members of national minorities a voice which is also "taken seriously."'[18] To this, one might add that effective participation may not be equivalent to empowerment until such time that members of national minorities are involved in the *preparation, implementation and assessment of national and regional development plans* and programmes likely to affect them directly. In other words, the Regional Policy of the EU may be the instrument that takes national minorities towards empowerment.

The empirical research from the Danish-German border region mentioned above has shown that the good governance scheme put in place as a result of the implementation of the FCNM as well as legal standards adopted earlier has provided the national minorities in the border region with a platform from which to be heard, to present their interests and their views about regional development. But more importantly, the study found that the minorities contribute to the development processes through action. Especially, in the economic sector they have provided impetus for new cross-border co-operation projects. They participate in the regional political fora that define development strategies, such as the Euro-region Sønderjylland-Schleswig and the new INTERREG Commission established to define the

next five year programme INTERREG IV, now called Territorial Co-operation. The existence of self-administered minority institutions furthermore provides the region with human and social capital that raises the level of these capitals in the region. Overall the national minorities in this border region contribute to society and regional development both in terms of participation and networking. They are showing that emancipation in terms of rights is one thing but empowerment in terms of participation and action in regional development is needed for full implementation of Article 15. And this might not have happened without the EU impetus towards regional development.

Conceptual problem areas for the minority empowerment approach

There are of course conceptual problems with bringing national minorities to the level of effective and empowered participation. When members of national minorities act on the basis of their interest in public affairs, they do this on the basis of their social and human capitals framed by their collective identities as well as on the ability to participate in the inter-cultural dialogue on equal footing and from a point of view of mutual understanding and respect.[19] Article 15 therefore requires not only that a model of democratic citizenship is fostered in the region but also that the parameters for inter-cultural dialogue are present. The concept of citizenship in terms of the traditional civil, political, socio-economic areas of participation is important in order that minorities can present their interests in a democratic way. But also concepts of culture, ethnicity, multiculturalism, and kin-state relations are relevant for understanding why and how these interests are being presented.

Democratic citizenship and national minorities

Although T.H. Marshall's theory of citizenship (1963) has been discredited somewhat for not meeting the demands of late modern globalization, it is still instructive. Marshall defined citizenship as a status which is enjoyed by a person who is a full member of a community.[20] It involves three components, the civil, the political and the social. Civil rights are necessary for individual freedoms. Political citizenship guarantees the right to participate in the exercise of political power, and social citizenship is the right to participate in an appropriate standard of living transferred through welfare and education systems. Scholars have since added the notion of the economic citizenship, i.e. the right to employment and to contribute to society. Clearly, all of these categories of citizenship are relevant to the idea of seeing members of national minorities as active citizens in the development of their regions. A large part of the Russian-speaking minority in Estonia has not even reached the first level of citizenship and clearly is years away from enjoying full citizenship in terms of participation. Others such as the national minorities in Norway are much closer to enjoying full citizenship. However, even in Norway the dialogue institutions are not functioning satisfactory according to the Advisory Committee and we have no numbers for participation in the public sector and judiciary.

Will Kymlicka and Norman Wayne have theorized four similar levels of citizenship, (1) status as a legal citizen, (2) identity as a member of political community, (3) activity in terms of civic virtues, and (4) the ideal of social cohesion. In their view these categories encapsulate all the aspects and problems that citizenship carries. Other scholars have offered different views of "active citizenship." Amartya Sen and Martha Nussbaum have developed the so-called capabilities approach to citizenship which is very much a development citizenship meaning that it emphasizes both individual development and the development of the society in which the individual is supposed to function as a citizen. Philip Pettit also advocates an active citizenship which he calls a republican citizenship.[21] Republican citizenship focuses more on civic duties than civic rights. There is thus general consensus that citizenship of the late modern era is supposed to create an active life of full participation. The question of citizenship in terms of virtues as noted by Kymlicka and Norman has been theorized further by political philosophers such as Onora O'Neill who defends a cosmopolitan notion of citizenship that focuses on duties through individual

practical reasoning about action.[22] William E. Connolly draws on a much less ambitious account of duties in his theory of critical responsiveness to citizenship and pluralism in modern societies. He argues that there will always be a distance in our togetherness but if we accept that we must show each other a limited amount of respect, or what he calls agonistic respect, then we may have peace.[23] One might speak of critical citizenship.[24] Basically, all these types of citizenship highlight the fact that for members of minorities to participate fully in the development of their own regions they must be empowered through a comprehensive approach to citizenship as active.

Inter-cultural dialogue relations and minorities

But active citizenship is not enough. If citizens are active they must also be in dialogue. The problem we encounter with regard to presenting minority interests in the inter-cultural dialogue is that the identity approach to minority protection has created a rather narrow perspective of minority cultures. Somehow the codified rights to protect culture and language have led to the assumption that minority cultures are static, homogenous groups of individuals who live only within the confines and boundaries of one minority culture. This essentialization of minorities as closed cultures has been amplified in the academic literature. It is therefore to some extent our own fault that we now have to criticize minority rights for promoting static views that inevitably lead to greater tensions in modern society.

Anne Phillips has taken up this problem and argued that culture has been misrepresented as an all encompassing explanation for what members of minorities do.[25] Phillips's aim is to defend multiculturalism mainly from a point of view of feminism. Feminism and multiculturalism have run counter to each other for the very same reason that minority rights have become suspicious in the minds of many. The key point of Phillips's argument is that cultures are not bounded, cultural meanings are internally contested, and cultures are not static but involved in a continuous process of change.[26] Phillips aim is therefore not to do away with culture but to

show us that culture as a concept needs to be de-essentialized and thus broadened to include multiplicity of identities and loyalties. It will then allow for women's equal rights to be retained and for minorities within minorities to enjoy equal rights.

The project of multiculturalism has indeed come in for some criticism in the last few years. Some would argue that the crisis in multiculturalism is misinterpreted because it groups all types of minorities in one. Hence, national minorities and indigenous peoples as representing difference are grouped with immigrants who also represent difference. This is a mistake which leads to the view that multiculturalism is not working because it includes too diverse groups. However, as Kymlicka has argued the countries, which have seen a backlash on multiculturalism, are countries where integration policies aimed at immigrants have not worked.[27] The integration and accommodation of national minorities and indigenous peoples have gone rather well.

Another problem of minority identity is ethnicity. This relates even more directly to Article 15 and thus also to the argument for empowerment through regional development. Following somewhat similar argumentation as Phillips, Rogers Brubaker argues for deconstructing the notion of ethnicity.[28] According to Brubaker we have come to think of ethnicity in terms of "groupism," or the idea that discrete, bounded groups are the basic constituents of social life, chief protagonists of social conflicts, and the fundamental units of social analysis.[29] This essentialist view of groups has led us down a wrong path, according to Brubaker. There has been a tendency to treat ethnic groups, nations, and races as substantial entities to which interests and agency can be attributed. Such reification of groupism has procured a picture of ethnic groups as monochrome ethnic, racial or cultural blocs. Instead Brubaker argues for a conceptualization of groups not as substances or things or entities or organisms or collective individuals but rather as relational, processual, dynamic, eventful and disaggregated units.[30] Brubaker argues that seeing ethnicity in these complex and contextual terms will help us see the true nature of for instance ethnic conflict not as conflicts between static groups but as conflicts of actions, cultural idioms, cognitive schemas,

organizations, institutions, political projects, contingent events, and variable groupness.[31] This argument has currency not only for analyzing ethnic conflicts but also for understanding minority rights in terms of ethics in policing and media and public sector participation.

In fact, in understanding the entire project of codifying minority protection in terms of rights that protect the identity of minorities it is important to understand that identity is clearly not a static phenomenon. William Connolly has eloquently defended the view that identity is contingent, meaning that difference is intrinsically linked to personal identity and that personal identity is established in relation to a series of differences.[32] Without difference, personal identity cannot exist. Simultaneously within the process of personal self-identification identity is fixed into a permanent form often thought to be the only true identity. However, in order to protect and maintain personal identity, differences may become converted into otherness. Otherness can be found on the range from unpleasant to evil. In sum, personal identity requires difference in order to exist, but it must often convert difference into otherness in order to secure its own self-certainty. This conversion happens through a process of negation. Identity is thus a slippery, insecure experience, dependent on its ability to define difference it will counter, resist, overturn or subvert definitions of difference in order to eventually negate the difference.[33] Identity stands in a complex, political relation to the differences it seeks to fix. It is an endless play of definition, counter-definition, and countering of counter-definitions. The contingency of identity is thus a stable part of identity itself. As we look for implementation of the rights that protect identities of minorities it is important that we see the contingency of identity. This is relevant in the market place of democratic participation, particularly in terms of the inter-cultural dialogue that is an important prerequisite for democratic participation.

A final point of inter-cultural dialogue that creates dilemmas in societies with national minorities is the issue of kin-state relations. This is one of the thorniest points in minority rights codification as we have seen in the turbulence resulting from the Hungarian "status law" problematique. But from the point of view of national minorities voicing their interests in the democratic process of economic development of regions, this must be a problem of the past. National minorities can contribute to economic development by using their kin-state contacts. In the Danish-German border region the kin-state problem was settled years ago with by a "Declaration of Loyalty" issued by the German minority in Denmark to the Danish state – a unique approach not seen elsewhere. Networking with kin-states for the purpose of economic development of border regions is a thing of the 21st century that cannot be solved with 19th century approaches. Especially, in the realm of the EU the fear of kin-state relations seems almost an anachronism. Certainly, in the light of the EU Regional Policy it should be a long gone battle.

Conclusions

The argument that EU integration through the Regional Policy may eventually become the mechanism that implements Article 15 in terms of minority participation in the *preparation, implementation and assessment of national and regional development plans* and programmes likely to affect them directly as well as Article 17 in terms of innovative networking across borders, is contingent on certain conceptual views of participation. It has been argued that it must assume a democratic citizenship which allows members of minorities' full participatory citizenship in order to be able to present their interests in a peaceful manner. It must allow members of minorities to accumulate social and human capitals upon which they can build their role of participation. Moreover, it must allow for a de-essentialized inter-cultural dialogue that does not rescind into static, homogenising views of culture. It must seek to deconstruct ethnicity in order that minorities are not categorized as monochrome ethnic, racial or cultural blocs, especially in the ethics of policing and the media. And it must foster a view of identity that is not afraid of seeing the contingency of identity in the difference of the Other. Finally, it must legitimize networking with kin-states by de-anachronizing this relationship in a time where economic minority participation is vital for regional

development. To ensure that national minorities are enabled to present their culturally induced interests in an effective and empowered manner, we must assemble a tool-kit that engages with all these concepts and dilemmas of participation.

Table 1 – EU Regional policy regions where minorities reside

Convergence regions EUR 199.3 million	Phasing-out regions EUR 14 million	Phasing-in regions EUR 11.4 million	Competitive regions EUR 43.6 million
154 million people		333 million people	
Estonia Latvia Lithuania Poland Germany/Dresden UK/Wales Romania Slovakia Spain/Galicia Bulgaria Greece/Thrace	Germany/ Brandenburg-South West UK/Scottish Highlands Austria/Burgenland Greece/Greek Macedonia	Finland/Ita-Suomi Cyprus	Sweden Denmark Finland/Åland Islands Germany/Schleswig-Holstein Spain/Catalonia Italy/South Tyrol France/Bretagne Spain/Basque Holland UK/Scotland UK/Northern Ireland

Source: EU Regional Policy 2007-2013 available online at
http://ec.europa.eu/regional_policy/atlas2007/fiche_index_en.htm

Notes

[1] Allott, *Eunomia* (Oxford: Oxford University Press, 1990), section 3.40, p. 52.
[2] Sia Spiliopoulou Åkermark, "Multiculturalism in Crisis?" p. 14 (paper on hand with author)
[3] Will Kymlicka, *Multicultural Odysseys. Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007)
[4] Ibid., p. 247
[5] Ibid., 244.
[6] Michael Keating, *Plurinational democracy. Stateless Nations in a Post-Sovereignty Era* (Oxford: Oxford University Press, 2002)
[7] Ibid., p. 171
[8] Tove H. Malloy, *National Minority Rights in Europe* (Oxford: Oxford University Press, 2005), Chapter 8
[9] Joseph Marko, EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES. A COMMENT ON CONCEPTUAL, LEGAL AND EMPIRICAL PROBLEMS. DH-MIN(2006)014 of 20 October 2006
[10] Competence Analysis: Minorities as *Standortfaktor* in the German-Danish border region. Working with each other, for each other (Bozen/Bolzano: European Academy, December 2007) available online at
http://www.landtag.ltsh.de/parlament/minderheitenpolitik/minderheitenpolitik_.html
[11] See Presidency Conclusions of the Lisbon European Council, 23-24 March 2000 for the original documents included in the Lisbon Strategy available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm
[12] See http://ec.europa.eu/regional_policy/atlas2007/fiche_index_en.htm
[13] Michael Keating and John Loughlin, "Introduction" in Keating and Loughlin (eds.), *The Political Economy of Regionalism*, pp. 1-16 at 3
[14] Ibid.
[15] Michael Keating, *The New Regionalism in Western Europe. Territorial Restructuring and Political Change* (Cheltenham: Edward Elgar, 1998) p. 73
[16] Olivier de Schutter, EUROPEAN UNION LEGISLATION AND THE NORMS OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES. DH-MIN(2006)019 of 23 October 2006
[17] Ibid., Conclusion
[18] Marko,, EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES. A COMMENT ON CONCEPTUAL, LEGAL AND EMPIRICAL PROBLEMS. DH-MIN(2006)014 of 20 October 2006, p. 9

[19] See UNESCO definition of inter-cultural dialogue at http://portal.unesco.org/culture/en/ev.php-URL_ID=35020&URL_DO=DO_TOPIC&URL_SECTION=201.html

[20] T.H. Marschall, "Citizenship and Social Class" (1963) reprinted in Robert E. Goodin and Philip Pettit (eds.), *Contemporary Political Philosophy. An Anthology* (Oxford: Blackwell, 1997), pp. 291-319

[21] Philip Pettit, *Republicanism. A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997)

[22] Onora O'Neill, *Towards Justice and Virtue. A constructive account of practical reasoning* (Cambridge: Cambridge University Press, 1996)

[23] William E. Connolly, *Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995)

[24] Malloy, *National Minority Rights in Europe* (Oxford: Oxford University Press, 2005), Chapter 5

[25] Anne Phillips, *Multiculturalism without Culture* (Princeton: Princeton University Press, 2007)

[26] Ibid., p. 27

[27] Kymlicka, *Multicultural Odysseys. Navigating the New International Politics of Diversity*

[28] Rogers Brubaker, *Ethnicity without Groups* (Cambridge, MA: Harvard University Press, 2004)

[29] Ibid., p. 8

[30] Ibid., p. 11

[31] Ibid., p. 27

[32] William E. Connolly, Identity*Difference. Democratic Negotiations of Political Paradox*. Expanded Edition (Minneapolis: University of Minnesota Press, 1991/2002)

[33] Ibid.