

The EU's Lack of Commitment to Minority Protection

Ulrike Barten*

University of Southern Denmark

Abstract

The European Union and national minorities have an uneasy relationship. The EU claims to make life better for all of us in all sorts of ways. It does not, however, want to engage very much with national minorities. This is puzzling, as the respect of minority rights has found its way into article 2 of the Treaty on European Union, which lists the common values upon which the Union is founded. It is furthermore puzzling, as the EU member states in other fora have recognized the vulnerability of minorities and the necessity of their special protection. On the other hand, the EU might be the wrong one to blame. EU institutions are limited in their competences to act when it comes to areas of importance to minorities. In addition, minorities are protected through other organizations. It is argued that it is unlikely that the EU will become a serious minority actor playing out its strength as a supranational actor, and therewith create a truly coherent minority rights regime with the OSCE and the Council of Europe.

Keywords: European Union, minority rights, Lisbon treaty, competences, European minority regime

‘The EU tries to make life better for all of us in all sorts of ways.’ This is the opening sentence in the EU’s Kids’ corner – the EU website for children (‘EU’s Kids Corner’, 2016). It is certainly true that the EU involves itself in almost all aspects of everyday life of its 500 million citizens. It may also be true that the EU aspires to improve the life of all of us living in the European Union. However, is it prepared to work in all sorts of ways? And is it prepared to address specific issues of vulnerable groups such as minorities? The answers to

* Dr Ulrike Barten is Associate Professor in International Law and Human Rights Law at the Law Department of the University of Southern Denmark. E-mail: ulb@sam.sdu.dk.

those two questions can at best be a hesitant yes, as the EU certainly has not proven to be a friend of minorities. Of course, generalizations are dangerous.

The EU is one of three international organizations in Europe that work with and on human rights: the OSCE, the Council of Europe and the European Union. The EU no doubt has the weakest link with minorities. It is not surprising that minorities crave the attention of the last missing big player in Europe. It even makes sense. The European Union is far more involved in all aspects of every-day life than the Council of Europe and the OSCE. If the EU were to take minorities seriously, what might be possible?

On the other hand, it is too easy to blame the EU for everything. The two EU treaties set the limits for the EU's competences. The flaw in the European minority regime, at least from a minority viewpoint perceived, is largely legally determined. Transforming the EU into a serious minority actor is a huge challenge where battles will have to be fought in many different places. At the same time, the OSCE and the Council of Europe already provide protection. The EU certainly *can* do more for minorities than it does at the moment – it does not work 'in all sorts of ways' for improving the everyday life of members of minorities. However, high expectations are met by legal limits.

The first chapter of the contribution opens with an overview of the status quo. Chapter two presents reasons in favour of increasing the EU's commitment to minority issues and reasons against such increased commitment. On the basis of these reasons, the third chapter discusses the possibilities and challenges of an increased commitment. Finally, the EU and its non-commitment are set in the larger European context. It is argued that it is unlikely that the EU will become a serious minority actor, and therewith create a coherent minority rights regime with the OSCE and the Council of Europe. This, however, is not necessarily a flaw of the European system for the protection of minorities.

1. Status quo of the EU as a minority actor

The Lisbon Treaty was a step forward for minorities; or so it seemed. Minorities are now mentioned in the new article 2 of the Treaty on European Union (TEU). The Charter of Fundamental Rights (CFR) includes minorities in art. 21 on non-discrimination. Art. 6 (1) TEU now confers on the Charter 'the same legal value as the Treaties.' In other words, the Charter is now legally binding on the member states and even more importantly on the EU institutions. Furthermore, new art. 6 (2) TEU paves the way for the EU to accede to the

European Convention on Human Rights (Defeis, 2010; McDermott, 2009-2010; Douglas-Scott, 2011). The accession is still in progress. On paper, these changes wield a number of opportunities and seem to indicate that minorities have finally been accepted within the EU regime. So far, these changes have been hardly felt at all (Barten, 2015).

In order to understand and evaluate the EU as a minority actor (Hummer, 2011), it is important to be aware of the legal limits. Granted, the legal limits are set by political actors and can thus be changed. However, conventional wisdom tells us that the EU itself is unwilling to engage. This is, of course, a blatant generalization. The EU is made up of many institutions and the Commission, Parliament and Council should not be confused. They have distinct approaches and most importantly different possibilities and competences.

If the legal boundaries prohibit the EU from entering more substantially into minority issues, one needs to call on the state actors to change the treaties. It will not change anything to blame, for example, the Commission if it only follows the rules. If, however, the rules allow for further engagement than is shown, then the EU actually *is* the right addressee of minority frustration.

1.1 Institutions

The European Commission is at the heart of the European Union. It is staffed by persons working for the EU and art. 17 TEU makes it abundantly clear that Commissioners are independent and work in the interest of the European Union. The Commission is the institution concerned with citizens' initiatives and therefore of special relevance. Art. 17 TEU specifies that the Commission promotes the general interests of the Union and takes appropriate initiatives to this end: 'It ensures the application of the Treaties, and of measures adopted by the institutions pursuant to them.' The Commission is thus a key actor when it comes to whether minorities could or should play a more prominent role in the European Union.

The European Parliament's powers have been massively expanded over the years; however, the parliament is still the smallest sibling of the three institutions. The parliament has not been an enemy of minorities; however, it is telling that the current parliament was on the verge of not establishing the Intergroup for Traditional Minorities, National Communities and Languages (Diedrichsen, 2014). According to art. 14 TEU, the parliament exercises legislative and budgetary power jointly with the Council.

The Council of the European Union is the institution that represents state interests. The Council is also involved in the legislative process. Art. 16 TEU regarding the competences of the Council mirrors art. 14 TEU on the European Parliament.

The Council and the Parliament have a key role in the legislative process while the Commission is the heart of the Union. Thus, all three actors are of prime importance for minorities. An institution such as the Court of Justice of the European Union, of course, is also relevant as it increasingly deals with human rights issues. However, as it is mainly involved in a post-potential breach situation and does not create law or take institutional initiatives, the Court is not central to the discussion of this contribution. Similarly, the Agency for Fundamental Rights is not a main actor, even though it has the potential to become a main actor.

1.2 Competences: minority issues and regional issues, culture, education and language

While the three main institutions have different competences regarding the legislative process, they are all bound by the principle of conferral as laid down in art. 5 TEU. Competences are conferred to the EU on the basis of the principles of subsidiarity and proportionality. As art. 4 TEU states, competences that are not conferred upon the Union in the treaties remain with the member states. It is thus important to establish which competences the EU actually has with regards to minority issues and the related issues of culture, language, education and regional issues.

Regarding the first area, the answer is short and simple. The EU has no express competences regarding minority issues. Even though the Union may be founded on the respect of rights of persons belonging to minorities, this is no legal basis for legislative action. Minorities are not mentioned in any other place in the TEU and TFEU. Art. 21 of the Charter of Fundamental Rights mentions members of national minorities in connection with non-discrimination.

This is a first sign of possible schizophrenia. The EU claims to be based on the respect of minority rights; however, it has no competences to protect or further the respect of minority rights. As is shown below, this is not surprising; and yet, it leaves a sour taste with members of minorities when the EU in art. 2 TEU speaks of EU values that are common to the member states but is not given the competences to secure respect for and promote the fulfilment of minority rights. Is this the EU's fault? Hardly; or at least not fully. The treaty of Lisbon, which introduced the respect for minority rights into the TEU, was negotiated by the

EU member states. Similarly, the conferral of competences was agreed upon by the member states that had to sign and ratify the Lisbon treaty. In this particular context, the EU is no more than the sum of its members. It would thus not do justice to accuse the EU as such of empty promises. If promises were indeed made, they were made by the member states.

If minorities want the European Union, or more precisely its institutions, to become active in minority protection, they need to take detours over the areas that are of importance to minorities. Traditionally, these are culture, language and education. Participation in political affairs is in EU terms covered by economic, social and territorial cohesion.

There are different categories of competences in the TFEU. According to art. 2 (1) TFEU, in areas where the Union has exclusive competence, only the EU may legislate and adopt legally binding acts. Art. 3 TFEU lists the areas where the EU has exclusive competence. Neither culture, language, education nor regional issues are among them. The most common category of competences is the one of shared competences. According to art. 2 (2) TFEU, both the EU and the member states may adopt legislation and legally binding acts. Primacy is given to the Union, stating that ‘member states shall exercise their competence to the extent that the Union has not exercised its competence’ and that member states ‘shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.’ According to art 4 (2), the areas covered by shared competences include the area of economic, social and territorial cohesion.

Articles 174-178 TFEU address this area. They address issues of economic development in ‘least favoured regions’ (Art. 174 (2) TEU). Development is supported through five structural funds (for an overview, see Structural and Investment Funds, [2016](#)). While minorities can benefit from these initiatives if they live in poorer or underdeveloped regions, they are by no means the target groups. The rationale behind cohesion policy is economic development and not a humanistic approach to improve the lives of people.

A better chance of improving participation of minorities might be through membership in the Committee of the Regions. The committee is composed of 350 elected representatives in regional or local authorities from all EU member states. The aim is to ‘give regions and cities a formal say in EU law-making ensuring that the position and needs of regional and local authorities are respected’ (Committee of the Regions, 2016). The first obvious weakness of the Committee is, of course, its lack of competence when it comes to binding decisions. The competences of the Committee are laid down in art. 307 TFEU and are namely

restricted to consultation and submission of opinions. None of the main institutions are bound by these opinions. The second weakness for minorities is that in order for a member of a minority to be eligible for membership in the Committee of the Regions, the particular member has to have been elected into an office at the regional or local level. In areas where the minority is a numerical majority, this might not pose a problem; however, where the minority is not politically represented (which can happen for a variety of reasons) at the regional or local level, members of a minority are precluded from becoming members of the Committee of the Regions.

In areas where no competence is conferred to the EU, the member states retain exclusive competence and the EU's competence to adopt legislation or other legally binding acts is very limited. Art. 6 TFEU lists areas where the Union is allowed to 'carry out actions to support, coordinate or supplement actions of the member states.' Among these areas are education and culture.

Art. 165 (4) TFEU lays down the competences of the EU in the area of education. The EU actually may adopt binding law; however, only 'incentive measures, excluding any harmonization of the laws and regulations of member states.' The Council may adopt recommendations. Art. 165 (1) explicitly states that the EU in all its actions 'fully respect[s] the responsibility of the member states for the content of teaching and the organization of education systems and their cultural and linguistic diversity.' The EU may encourage, promote and develop – however, only as supplements to member state activities.

Art. 167 (1) TFEU on culture shows a similar approach. The EU 'shall contribute to the flowering of cultures of the member states.' The Union shall encourage cooperation. Specific actions can be taken in the form of 'incentive measures, excluding any harmonization of laws and regulations of the member states.' In addition, the Council may adopt recommendations. This is a mirror of the competences in the area of culture.

Language does not appear as a separate policy area within the treaties. Art. 3 TEU speaks of cultural and linguistic diversity; however, art. 3 is not a legal basis for the EU institutions. Art. 165 TFEU also refers to linguistic diversity; however in the larger context of education. Furthermore, it is by no means clear that articles 3 and 165 refer to the linguistic *within* member states. It rather seems they refer to the linguistic diversity *between* the member states (for a more general discussion, see Toggenburg, 2003). They would thus refer to the official languages in the European Union.

In conclusion, the member states have not provided the EU with strong competences in the areas of special relevance for minorities. The institutions are legally limited in their activities. This, however, does not mean they cannot do anything.

2. An overview of reasons in favour and against more EU commitment

Legal limits need to be taken seriously. However, limits can be moved. As the current limits are laid down in the EU treaties, any movement of limits would have to be done in the treaties. Are there good reasons for going down that road? Arguably yes. Are there just as good reasons for not going down that road? Arguably yes, as well. Below, an overview of reasons is given before the next chapter looks at the possibilities and challenges if one were to go down the road of increasing the EU's commitment with minority issues.

2.1 Reasons in favour of increasing EU commitment to minority issues

Several reasons come to mind that favour a stronger commitment of the EU to minority issues. Firstly, it seems obvious that the EU should take special care of the 50-75 million people belonging to minorities within the EU. That is the equivalent of the entire populations of Denmark, Sweden, Portugal, the Czech Republic, Austria and Slovakia *taken together* – add the entire populations of the Netherlands, Finland and Lithuania to reach the upper estimate of 75 million people.

Most of the EU member states have ratified the Framework Convention for the Protection of National Minorities (Council of Europe, 2016) and thereby confirmed that they recognize minorities as groups in need of special protection. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly, 1992) was not opposed by any (EU member) state. All EU member states are also members of the Organization for Security and Cooperation in Europe and agreed to the Copenhagen Document in 1990 which includes a long section on minority rights (Copenhagen Document, 1990). It only seems to be the next logical step to let the EU become a serious actor regarding minority issues.

Another argument could be the extent to which the EU involves itself with the everyday life of its citizens. Due to its supranational character, it has a further reach than any of the other organizations. If there is a group with special needs, the EU should surely not only be

aware of these special needs but also be able to become active in that regard? The EU could make a difference in the everyday life of members of minorities that face special challenges because of their membership. If minority protection is a common value for the European Union, it would only be consistent that the EU was also able to effectively protect minorities in everyday life.

A third argument takes the larger framework into account. Human rights, and thereby minority rights, are protected by the Council of Europe, the OSCE and to some degree the European Union. The EU, however, has only limited competences as shown above. This leaves a caveat. Providing the EU with competences on minority issues would simply be filling in the missing piece in a coherent minority protection regime in Europe.

Fourthly and lastly, after having elevated the respect for minority rights to a common value and after making the Charter of Fundamental Rights with its prohibition of discrimination on the basis of membership in a national minority, the follow-up is to provide the EU with competences to act on these expectations, which were raised with the Lisbon Treaty. A Danish member of the European Parliament, Christel Schaldemose, expressed this view after the Commission rejected the Minority Safepack (Nygaard, 2013). She went further and asked the Commission for ‘the real reason’ for rejection, and whether it would reconsider its refusal and if not, ‘re-evaluate the citizens’ initiative so that in future it can actually be used for those matters that concern citizens’ (Schaldemose, 2013). The Commission answered the first question by referring to its letter of refusal (Letter from the Commission, 2013) and did not answer her other questions (European Commission, 2013).

2.2 Reasons against increasing EU commitment to minority issues

While there may be good reasons in favour of providing the EU with special minority competences, there are also some good reasons against this. For one, the mere fact that there is a group of 10-15% of the EU population that somehow stands out from the crowd is a superficial argument. This argument implies that any group that can be singled out among the five hundred and ten million inhabitants of the European Union and that numbers about 10-15% of the population is worthy of extra EU protection. This is clearly not the case. The size of the group is not decisive for protection. 10.2% of all people living in the EU were born outside the EU (‘People in the EU’, 2015), yet there is no special protection mechanism in place for them.

Furthermore, there is a risk of spill-over effect; or rather, spill-over demands. If minorities can be singled out as a group worthy of extra attention or protection, then other groups might claim the same attention or protection. Whereas this reason is understandable from the EU's point of view, it potentially lacks in substance. Spill-over effects to groups in need of special protection can hardly be considered a drawback. At the same time, demands from all sorts of groups, simply because they make up 10-15% of the population, will in most cases not be constructive. Special measures have to depend on the need for protection, not on the size of the group.

The second in-favour argument is based on the EU's involvement in everyday life. True, EU citizens meet some sort of EU law every single day; mostly without being aware of it. However, the treaties are very clear that for example culture and education are two areas where the EU does not play a main role. EU competences are simply limited in these areas. If the EU's commitment to minority issues should cover culture and education it would not be enough to simply establish some sort of minority competence, but the competences in the areas of culture and education would have to be broadened as well. Minority education or minority culture cannot be treated separately from majority education and culture.

The last in-favour argument claims that the EU is the missing piece in a coherent minority protection regime in Europe. It *is* odd that both the OSCE and the Council of Europe have identified minorities as needing special protection or playing a crucial role in security issues and the European Union, which has the furthest outreach of the three organizations, remains a background player at best. However, to a large degree, this is explained by the limited competences of the EU. In addition, the fact that the EU will (probably) accede to the European Convention on Human Rights, and the Charter of Fundamental Rights is legally binding on EU institutions, moves the EU to the front stage of human rights. In the wake of this development, members of minorities will have opportunities to claim respect for and protection of their rights.

After the Court of Justice of the European Union delivered its opinion on EU accession to the ECHR (CJEU: Opinion 2/13), it is unclear if and when the EU will accede to the Convention. This is a decisive step for a coherent human rights regime that also strengthens the rights of persons belonging to minorities. At the moment, the EU *is* a missing piece; however, the CFR's binding nature already changes this to a certain degree. While this means that the EU becomes a more serious human rights actor, it does not change the fact that the minority protection regime in Europe is incomplete without the European Union.

The main argument against providing the EU with far reaching competences on minority issues seems to be state sovereignty. States have simply not been willing to let the EU enter the minority arena. National governments exhibit very different approaches towards their minorities ranging from non-recognition to fruitful integration. Minority issues can be sensitive issues. There is a reason why the OSCE High Commissioner on National Minorities is a security mechanism. It is not surprising that the handling of such sensitive issues is not left to a supranational organization; let alone conferring competences to the EU that provide for legally binding decisions on the basis of majority voting.

Of course, equating increased EU commitment with exclusive EU legislative competence is a serious exaggeration. Increasing the EU's commitment can take many shapes as is shown below. It does not necessarily lead to legislative competences and legally binding decisions. It does not necessarily mean that a new policy area on minority issues is introduced into the TFEU. This is all up to the member states.

Which reasons – those in favour or those against increased commitment – weigh heavier is a matter of personal conviction. For the purpose of this contribution, it is now necessary to look at the possibilities and challenges of increased commitment.

3. Possibilities and challenges of increasing the EU's commitment

Increasing the EU's commitment to minority issues can take many forms and faces many challenges. Whereas the possibilities will first be discussed, the challenges make up the second part of this chapter.

3.1 Possibilities

The possibilities suggested here by no means make up an exhaustive list of possibilities. The suggestions fall mainly into two categories: institutions and material competences. Any new institution must, of course, also be endowed with a mandate; however, the material competences referred to here mean the competences in certain policy areas as laid down in the treaties and independent of specific institutions.

In the context of institutions, minority rights could be addressed in various ways. One possibility could be the establishment of a Commissioner for Minority Rights or a Commissioner on Human Rights including minority rights. Human rights are spread out in the portfolios of several commissioners.¹ There is no word on minorities. Bundling at least

the broader area of human rights issues with one commissioner would lead to putting focus on human rights and minority rights. The mandate of the commissioner could include mainstreaming minority protection.

A second possibility is the establishment of a Committee of Minorities which is modelled on the Committee of the Regions. The Committee would be involved in areas of minority concern. Regarding its competences, it would submit opinions and be consulted by the main institutions. Of course, a larger role would be desirable from a minority point of view; however, the question is – which is also addressed in more detail below – what is feasible considering a general member state reluctance to let the EU deal with minority issues at all.

An idea taken from the UN human rights regime is the establishment of a Special Rapporteur. The mandate of special rapporteurs typically includes country visits and the possibility to interact with civil society; in this case obviously with minorities. Special rapporteurs are no ombudsmen and they do not make legally binding decisions. They raise awareness, shed light on situations and challenges and make recommendations (de Schutter, 2014: 973-980). A special rapporteur is an intergovernmental institution. The special rapporteur could, like a Committee of Minorities, be involved in the work of the main institutions on a consultative basis.

The Fundamental Rights Agency could be made a more substantial player in the minority arena. This would mean setting new priorities for the Agency. The Agency could serve as a sort of watch dog on EU legislation with a special focus on effects for minorities. The Commission, of course, is already obliged to ensure that all EU legislation is in conformity with the Charter of Fundamental Rights, and thus does not discriminate against members of national minorities. The mandate of the Agency could be slightly different in the sense, that the Charter would only form part of the work. By watching over EU legislation, a mainstreaming of minority protection would ideally be achieved.

In regards to material competences, there is always a possibility to broaden competences during treaty revisions. Either a new policy area could be introduced or the competences in those areas of special minority concern could be broadened. Apart from the fact, though, that no general treaty revision is in sight at the moment, general state reluctance and sovereignty issues makes this a less than likely possibility.

A third category of possibilities is that of the proposals in the minority citizens' initiative Minority Safepack (FUEN, 2016). The initiative includes eleven specific initiatives that strengthen minority protection in various ways. The problem with these eleven initiatives is that some or all have been deemed by the Commission to fall outside its scope of competences (Letter from the Commission, 2013). Unfortunately, the Commission failed to clarify which initiatives might fall within the scope of its competences. The decision by the Commission has been challenged before the Court of Justice of the European Union (case T-646/13); however, no decision has been made yet by the court. Thus, it is as of today unclear which initiatives, if any, fall within the competences of the Commission. If the Commission indeed has competences that it does not make use of, then the Minority Safepack Initiative offers new possibilities that may require new institutions, but no broadening of material competences.

It goes beyond the scope of this contribution to assess each of the eleven initiatives in terms of the scope of competence of the Commission. Therefore, only a few are mentioned here. The first initiative aims at a council recommendation as referred to in articles 165 and 167 TFEU – also referred to above in the context of education and culture. The recommendation is meant to aim at the protection and promotion of cultural and linguistic diversity in the Union (initiative 2.1). An institutional initiative, also on the basis of articles 165 and 167 TFEU, concerns the setting up of language diversity centres (initiative 2.3). Adjusting regional funds to promote pluralism in regions with minorities (initiative 3.2) is based on articles 173 (3) and 182 (1) TFEU and addresses the issue of minority participation. Similarly, initiative 2.2, based on articles 165 and 167 TFEU, aims at adjusting funding programmes to make them accessible for smaller language communities. All of these initiatives have in common that they seem – pending a thorough analysis – to fall within the scope of competence of the Commission. None of them aims at harmonization of national laws, and they are supportive and supplementary to existing instruments. They could be implemented without treaty revision.

3.2 Challenges

Possibilities are usually countered by challenges. It was already stated above, that the main challenge for increasing the EU's commitment to minority issues is a general member state reluctance to provide the EU with the necessary competences. This is not only the case with explicit minority issues, but also with areas such as education and culture, which are of special importance to minorities.

A revision of the treaties is not on the agenda and even if that were to take place soon, that would not guarantee the good will of EU member states towards minorities. Establishing new institutions that work at the intergovernmental level and not supranationally might have a better chance than broadening material competences. However, again there are no signs that indicate that the EU itself or the member states would have an interest in establishing a special rapporteur or a Committee of Minorities.

In short, the political will of member states is lacking. How far the limited competences can justify the reluctance of the Commission remains to be seen, when the Court of Justice makes a decision in the Minority Safepack case. One should also bear in mind, that even if the Court should find against the Commission, this does not in any way mean that any of the initiatives falling within the Commission's competences will become reality.

Even if good will towards minorities were to be found, it will be important to cooperate closely with the OSCE and the Council of Europe. Being the then no longer missing piece means filling a hole and both regarding the OSCE and the Council of Europe, duplication of their work should be avoided. Instead cooperation is envisaged. The EU and the Council of Europe have signed a Memorandum of Understanding, which speaks of an enhanced partnership (Memorandum of Understanding, 2007).

Even if goodwill were to be found, minorities would bring a number of challenges with them. The spill-over demands were already mentioned above and would have to be dealt with. The fact that there exists no legally binding definition of what constitutes a minority might become a problem. At the moment, states themselves decide which minorities they recognize and protect under different mechanisms. This is in stark contrast to the first OSCE High Commissioner Max van der Stoel's statement, that minorities are a matter of fact, not of definition (van der Stoel, 1993). Furthermore, when engaging with minorities, how is it determined who rightly represents a minority? Minorities come in various characters (linguistic, religious etc.), sizes and geographical spreading. The lack of a binding definition shows how difficult it is to find a description which fits so many different groups.

3.3 Intermediate conclusion

There are ample possibilities of improving minority protection within the European Union. Probably, the EU has competences which are of use to minorities which it does not make use of at the moment or which the minorities are not aware are useful for them (Ahmed, 2011). Almost any initiative faces the challenge of lack of member state interest. Be it for security

reasons, because of sovereignty issues, for competence issues or for other reasons, minorities seem to meet a wall of resistance when it comes to the EU.

4. The European context

In order to assess whether the European Union really is of such vital importance to minorities, the larger European context has to be taken into consideration. Minorities are protected by the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Language – of course, only in the states party to the treaties. The OSCE has established a security mechanism with the High Commissioner on National Minorities; the HCNM. The question now is, whether the EU actually *is* the missing piece.

4.1 The Council of Europe

The Council of Europe is characterized by an intergovernmental approach based on international law. The two main protection mechanisms for minorities are provided by the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Implementation is in both cases supervised through a monitoring system. Individuals have no possibility of claiming breaches under either treaty. The monitoring cycles end with recommendations.

The Framework Convention often uses broad or vague formulations. This leaves space for the states to fill the framework of minority protection according to their own national situations. The Convention covers all of the most important areas for minorities: existence, identity, language, culture, education, participation and cross-frontier contacts. The Advisory Committee of the Framework Convention has been able to establish itself as a heavy weight in the minority protection regime in Europe.

The Language Charter focuses only on language. However, the Charter is extremely detailed and offers a so-called menu of rights. A certain number of rights in prescribed sections must be chosen; however, the parties to the Charter again have the possibility to apply the Charter to their own situation. As was noted above, minorities come in all forms, sizes and territorial spreading. Effective protection is always tailored to a specific minority. Thus, a certain degree of flexibility ensures a better application of protective measures.

4.2 The OSCE

The OSCE is characterized by a political approach. There is no treaty under international law. Even the founding documents – the Final Act of Helsinki and the Charter of Paris for a New Europe are not treaties under international law. Decisions are taken by consensus. The OSCE relies solely on diplomacy, political pressure and political goodwill.

Despite the absence of judicial mechanisms, the OSCE is able to effectively work for security and promote cooperation in Europe. In the field of minorities, the High Commissioner on National Minorities is most noteworthy. A conflict prevention tool, the HCNM works quietly and aims at solving issues before serious conflicts break out. The HCNM does not take sides when problems arise between a government and a minority. However, the security approach is characterized by the belief, that well treated minorities pose no threat to the peace and security of a state. This should not be understood to grant each minority each and every single wish. It is a mere general approach that believes that persecution and oppression of minorities easily can lead to breaches of peace and security in a state (CSCE Helsinki, 1992: ch. II). The OSCE serves as a forum for negotiations, confidence building and generally keeps in the background.

4.3 The European Union: The missing piece?

Both the OSCE and the Council of Europe interact with the government of states. For twenty-eight of the member states of the OSCE and the Council of Europe, there are other institutions that have a profound impact on national legislation: the EU institutions. Until 2009, the EU institutions were outside the scope of any human rights obligations, not even speaking about minority rights. In 2001, the Charter of Fundamental Rights slowly introduced the EU institutions to human rights obligations. However, it is only since 2009 that the institutions also are legally bound by the Charter. This change of the Charter's legal status marked a profound turning point in the European human rights regime. Now, all actors that make legally binding law must meet human rights standards. These standards stem from different sources such as the Charter of Fundamental Rights and the European Convention on Human Rights. They may vary slightly and some rights, such as the right to data protection in the CFR, are only found in source. Nevertheless, the fact that EU institutions now have legally binding human rights obligations means that the EU is no longer completely missing in the European context. The EU will further strengthen its commitments when it accedes to the European Convention of Human Rights.

Furthermore, the three organizations already cooperate. Already the Treaty on the European Coal and Steel Community included provisions on close cooperation, and cooperation has existed ever since (Vandenbergh, 2008/2009: 8-31).

The fact that the European Union is no longer missing and will even come to the fore once accession has taken place bodes well for human rights and members of minorities, who, of course, also enjoy general human rights. Neither the change of legality of the CFR nor EU accession to the ECHR, however, cause the EU to fill the hole in the minority rights regime in Europe. Members of minorities certainly benefit from better human rights protection; however, their special needs of protection are left unconsidered in the general human rights context.

Based on this assessment, even with the changes of the Treaty of Lisbon, the European Union remains the missing piece in a coherent minority rights regime in Europe. The tentative steps towards minority protection were not supported by competences in the treaties. A follow-up is thus just as necessary as it is unlikely at the moment. None of the initiatives introduced in chapter 3 stand a good chance of being implemented. The EU will thus remain a severed minority rights actor. Art. 2 TEU and the prohibition of discrimination on the basis of membership in national minorities together with the general strengthening of human rights provides for a good basis – however, minorities cannot expect much protection from these changes in their everyday life as members of minorities.

At the same time, though, minorities are actually protected via other mechanisms. The European Union may thus be the missing piece; however, the hole it has to fill is not as large as it once was. Considering the limited competences of the EU in areas of relevance to minorities, there are limitations to what the EU could fill the hole with.

The Federal Union of European Nationalities lends support to the citizens' initiative Minority Safepack whose very aim is to engage the EU more with minority issues and the initiative includes specific proposals. The implementation of the Minority Safepack could fill the hole to a certain degree. However, when considering the competences and ways of working of the three organizations, the one thing that separates the EU from the OSCE and the Council of Europe is its supranational character. The hole in a coherent minority regime in Europe is not likely to be filled with supranational competences for the European Union.

Yes, coherence will be improved if the EU were to implement the suggestions of chapter three. However, it wouldn't draw on the strength of the European Union; its supranationality.

5. Non-commitment as a merit or a flaw

Whether one considers the relative non-commitment to be a merit or a flaw depends very much on one's own starting point and cannot be answered objectively. In chapter 2, reasons in favour of and against stronger commitment were presented. Obviously, being in favour of increased commitment is based on seeing the non-commitment as a flaw. Being against increased commitment, however, does not necessarily correspond with seeing the non-commitment as a merit. More commitment might actually be desired; just not under the current conditions.

Non-commitment of the EU, being the limited actor it is at the moment, may actually be a good thing for minorities. This, however, should not be confused with an acceptance of the status quo but could equally signify a wish for a profound change of the EU in order to transform the EU into a serious minority actor – as realistic or unrealistic as this may be.

The fact that the European actor with the furthest reaching competences does not engage with minorities is puzzling from a minority point of view. However, from a variety of other viewpoints, this is actually comprehensible. The EU is only gradually evolving into a political and human rights actor. Granted, more promises have been indicated than have been acted upon; however, the European Union is not a human rights organization. Furthermore, the EU does not aim at special group protection. There is no reason why the EU would start singling out minorities and awarding them with special protection mechanisms. Lastly, the member states themselves have not been willing to provide the EU with strong competences in the areas of special relevance to minorities. In other words, the EU is legally limited to act. In conclusion, puzzlement at non-commitment is misplaced.

A real change for minority protection in Europe would mean an extension of competences within the European Union. This presupposes the good will of states and a treaty revision process; none of which is anywhere in sight. To make real changes and introduce the EU as a minority actor, minorities have very a long way to go and hard work to do. Only if they persuade their governments will they stand a chance of changing competences.

Until this happens, the EU is not really a missing piece in the European minority rights regime. What the EU could offer is very little with the limited competences. A special rapporteur, a Committee of Minorities or a different focus for the Agency of Fundamental Rights may all contribute to putting a focus on minorities and mainstreaming minority rights. The EU is already on its way to strengthening human rights. The missing piece becomes smaller and smaller. However, the important characteristics of the EU compared to the OSCE and the Council of Europe is its supra-nationality. The supra-national competences of the EU, however, are unlikely to reach minorities anytime soon.

Notes

1. The Commissioner on Justice, Consumers and Gender Equality is, amongst other things, responsible for the finalization of the EU accession to the ECHR and that all Commission proposals respect the Charter of Fundamental Rights. The responsibilities of the Commissioner on Education, Culture, Youth and Sport include 'empowering young people of all social and cultural backgrounds so that they can participate fully in civic and democratic life.' This could be of relevance for young members of minorities; however, at the same time, there is no indication that they are the target of this responsibility. The Commissioner on Migration, Home Affairs and Citizenship has the somewhat vaguely formulated responsibility of "strengthening citizens' rights provided for in the EU treaties". For the tasks see respectively the mission letters from Jean-Claude Juncker from 1 November 2014.

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