Minorities in Europe - the Divergence of Law and Policy

Libor Stepanek

The European Union has aspirations to further integration and enlargement, creating a diverse, tolerant and multicultural society. Doing so has brought minority rights back into the heart of European political speech, but to date this has not been reflected in laws and norms governing either member states or the EU as a whole. As a result, the Union is forced to promote respect for minorities in candidate countries using only the legal tools of non-discrimination. While effective, on their own these instruments may not be sufficient to ensure the diversity vital to European aspirations.

Minorities in European political integration

Europe is a small multicultural and multiethnic territory where many communities co-exist in a complicated web of mutual interdependence. The political status of minorities within European societies depends on the willingness of particular political constellations to acknowledge and implement multiculturalism. Formally, European diversity is widely acknowledged by now, especially in the current EU members. However, translating this principle into concrete legal rights for minorities has not been easy.

A minority is usually imagined as a group of people culturally, ethnically, or racially distinct from a larger society. A second characteristic, for our purposes, is that a minority group is necessarily subordinate - politically or economically - to the dominant group within a society. Members of minorities, who are distinctively different from the majority, do not enjoy full participation in the structure and activities of the society and/or an equal share of the rewards. Sooner or later, demands for equal treatment arise, which societies - that is the "majority" - may respond to in one of two ways - either by eliminating or tolerating the minority. Historically, elimination has been common, ranging from non-violent assimilation to outright extermination. Today, however, tolerance is the European norm.

Differing policies within the EU

When the European Community was established in 1957, the fundamental proposal was to build a framework for encouraging economic co-operation and integration, with the added political ambition of securing peace and prosperity in Europe. There existed no common approach to culture or minority problems at this initial stage of integration. At the far side of the continent, under Communist rule, the situation was worse. Soviet models of assimilation ranged from the insensitive to the outright catastrophic. It is now widely recognised that the breakdown of Communist rule in Eastern and Central Europe, and the drive to future enlargement of the EU provided conditions for minorities to reassert their identities. Alternative approaches range from those who, like Glatz, emphasise the importance of international co-operation through the creation of minority institutions and pan-European legal provisions, [1] and those such as Liebich, who call for a re-definition of the concept "minorities", and perceive a shift in the "majority" attitude. [2]

However, the states participating in European integration did not attempt to harmonise a Community approach to this question - there were no pan-European treaties or norms, and the general attitude of the Commission and Council were characterised by the belief that "what the Member-States do with 'their' minorities is not the EU´s business". [3] France, for instance, follows a long Republican policy of consistent assimilation, reducing all group distinctions into an idealised "Frenchness", where the distinct features of any given minority group are placed firmly in the private sphere and thus depoliticised. Germany, on the other hand, applies a system of "temporary incorporation", whereby non-German minorities confront insurmountable obstacles to gaining citizenship - witness, for example, the large Turkish community in Germany, never accepted as a minority group but as "guest-workers" across generations. [4] Britain is another example. Hierarchical cultural pluralism or, to use Barsa's term, "permanent differentiated incorporation", has been applied on the British Islands. [5] On the one hand, a view of society as fundamentally divided into regional, ethnic or other competing groups with particular autonomous goals has resulted in a fairly tolerant policy, involving a comparatively wide range of institutional support of minorities. On the other hand, the notion of superiority of the English culture has not been dismantled.

Evolving EU policy

In resolutions dating from the 1980s, the European Parliament showed interest in minorities - for the first time at EU level - observing that the Parliament itself should "represent the cultural diversity of Europe" and therefore attached "great importance to the participation of cultural, racial and ethnic minorities in both social and political decision making processes". [6] The Parliament formulated some key ideas and possibilities for future common standards in

the areas of culture, education, mass media or political representation, yet the non-binding character of its resolutions resulted in minimal practical effect.

Fundamental changes emerged only in the 1990s, with the fall of Communism. Newly independent majorities in many post-Communist countries elaborated ethnocentric state policies, flagrantly ignoring the minorities on their territories. Some, such as the Czech Republic, in the hope to 'return' to Europe, swiftly changed their rhetoric and, later, some internal policies, and slowly began to construct political and public awareness of minority issues. Others, such as Slovakia under the nationalist Mečiar, rejected the principles of minority protection outright, to the detriment of its EU aspirations. In either case, however, the EU's potential for good was compromised by its own uncoordinated internal policy. Excesses, such as Northern Ireland, illustrating the EU's own vulnerability to minority tensions has not gone unnoticed in candidate states.

In the meantime, the EU itself was moving beyond economic to political integration, pushing the accommodation of differing cultures and languages - including minorities - higher on the agenda. While the 1992 Maastricht Treaty aimed to promote "the flowering of the cultures of the Member-States, while respecting their national and regional diversity" [7] , the Amsterdam Treaty, which entered into force in mid-1999, opened new vistas with its new requirement on states to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." [8]

By the late 1990s, the EU had incorporated minority issues on its internal agenda, focusing on three different areas. First, the Parliament and Commission began to develop a normative approach (focusing particularly on non-discrimination); second, cross-border co-operation was emphasised within EU "external relations" policy, including PHARE support for regional activities, including in support of minorities. Third, policies and programmes on the related issues surrounding racism in Europe were developed. It should be noted, however, that none of these result directly in European minority rights norms.

Culture, tolerance and the uses of law

Europe has apparently accepted diversity, multiculturalism and tolerance as fundamental principles. Witness, for example, the Council declaration that "Europe, characterised by solidarity and a rich cultural mix, is founded on respect for diversity and on tolerance. All member-states ... are continuously striving to build and maintain a Europe based on [...] the diversity of its cultures and languages, a Europe where [the] rights of Minorities are protected." [9] Or, in the words of Commission President Romano Prodi: "we must never forget that Europe is all about diversity. Therefore it needs us to respect and reap the rewards of diversity. European integration has always been about diverse peoples with varied cultures [...] Diversity is one of Europe's greatest treasures." [10]

These are fine words, but how are they to become fact? One approach, offered by Czech sociologist Jiřina Šiklová, is to link tolerance to culture. Culture, in her opinion, provides a means for overcoming basic biases: "...xenophobia or fear of the unknown is natural to human beings. When seeing a strange face every little baby starts crying. ... Our culture teaches us how to behave, if we want to be accepted, therefore acceptation of minorities is a necessity." [11] To put it another way, can a developing "European culture" engender tolerance where it is not already in place? And if so, how can law help?

Alternatively, a clear standard, in keeping with Europe's liberal tradition, is the rejection of intolerance, through, for example, anti-discrimination law. Following Skutnabb-Kangas's classifications of racism, intolerance can be characterised as "open" or "hidden". [12] Open intolerance encompasses the frequent displays of racist behaviour evident throughout Europe, the extreme being the attacks of skinheads' or neo-Nazi groups, in countries such as the Czech Republic, on members of different race or ethnic groups. In principle, behaviour of this kind can be easily addressed by law. In practise, however, attempts to do so may run up against "hidden intolerance" within society, or in the legal and judicial system. Thus in the Czech Republic and neighbouring Slovakia, although countless assaults on minorities by skinheads have been recorded, few of these are prosecuted, and only in a handful are there convictions recognising racial motivations.

Intolerance may further appear at the institutional or the ideological level. The first appears in the form of discrimination in the educational system, the administration or politics, the latter in cultural norms, media reports, or everyday situations. Both can be tackled through legal norms, but both are subject to the same limitations mentioned above. In the post-Communist world, moreover, attempts to address the second using anti-discrimination procedures tend to provoke public displeasure at the apparent restrictions on freedom involved. Before one can properly treat all as equal, some normalisation of the "other" - of minorities - may be required.

Is it not possible that tolerance may be engendered more effectively by assuring the visibility of minorities in mainstream culture, the normalisation of different cultures and languages and the participation of minorities in social and political life? Is it not possible, in other words, that granting minorities rights - tools to greater participation - might be a necessary complement to the adoption of anti-discrimination legislation?

To conclude, the EU-system for equal treatment of minorities and the policies found in Europe are characterised by contradictions, but there is plenty of scope for progress. The last twenty years clearly show increasing interest at the EU level in minorities, and this is accompanied by a changed perception in much of European society. The collapse of the Communist block together with the politicisation of the integration process has accelerated the incorporation of minority measures into the internal agenda of EU. To date this has been manifest through the introduction of pan-European anti-discrimination laws rather than "minority rights".

The result is that in advocating diversity and tolerance in an enlarging Europe, the EU is restricted to promoting legal instruments whose main import is the denial of intolerance, rather than the engendering of diversity. It is difficult to predict whether such an approach will succeed in the project of creating the tolerant and responsible mixed society that Europeans and their leaders aspire to.

Footnotes

[1] Glatz, F.: *Otázka menšín vo strednej Európe*, Europa Institut Budapest, Budapešť, 1993, pp.18-30.

[2] Liebich, A.: *Ethnic Minorities and Long-Term Implications of EU Enlargement*, EUI Working Paper RSC No. 98/49.

[3] De Witte, B.: *Politics versus Law in the EU´s Approach to Ethnic Minorities*, EUI working paper, RSC No. 2000/4. p.9.

[4] Barša, P.: *Politická teorie multikulturalismu*, Centrum pro studium demokracie a kultury, Brno, 1999, pp. 209-231.

[5] *Ibid*.

[6] European Parliament resolution on racism, xenophobia and anti-semitism and on further steps to combat racial discrimination, OJ 1999, no. C 98, p. 488.

[7] Maastricht Treaty, Article 128.

[8] Amsterdam Treaty, Article 6a.

[9] Declaration by the Council and the representatives of governments of the Member States on respecting diversity and combating racism and xenophobia, OJ 1998 No. C 001, p.1.

[10] Prodi, R.: Inauguration speech at the European Monitoring Centre on Racism, Vienna, 07/04/00.

[11] Šiklová, J. *Op Cit*.

[12] Skutnabb-Kangas, T.: *Menšina, jazyk a rasizmus*, Kallingram, Bratislava, 2000, pp.270-276.