

POLIS 2005 Conference

Paris 17-18 June 2005

Workshop 6: New Political identities: social movements, migrants and minorities

Dr. Anja Mihr, Humboldt University of Berlin, Germany, anja.mihr@staff.hu-berlin.de

Workshop Paper/ Work in Progress!

Minority Rights and Political Movements

This paper is work in progress and presents the first draft of my work on minority rights and political participation in Europe.¹

In this paper I follow the debate on the current political movements of minority groups in Europe striving for equal treatment, recognition and more participation can only be taken adequately into account on a supranational European level. The national governments and state centered regime will neither be able to solve the challenges of self-identification and self-determination, for example as caused by the Basque or the Scottish nationalist movements. Neither will it be able to solve the rising problems through migration, such as the Kurdish movement; or giving adequate recognition to the cross boarder political movements such as of the Roma.

Such challenges and problems can *only* be faced and solved within the European Institutions of the Council of Europe, the OSCE and their protective and peace building systems and at the same time within the EU-enlargement process and its institutional participatory and democratic opportunities. These European Institutions are able to take references to regional identities and history and are not necessarily linked to the political will and interest of one particular state or nation. In present times demands such as self-determination, independence and adequate representations of minority groups can not be

¹ The paper is also part of a larger research project, founded by Volkswagen Foundation in Germany "Teaching Human Rights in Europe" which deals with Human Rights Education and empowerment of national Minorities in various European countries. The research is conducted at the Humboldt University of Berlin and at the University of Potsdam in, in Germany, www.humanrightsresearch.de . It started in 2003 and will finish in 2006.

easily given in on a state level because of the national identity of non-minority groups and the rest of society, history, missing reconciliation processes, lack of democratic means or national constitutions.

European Institutions and Minority protection

The Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE) have extended their legal protective and a political binding monitoring system after the end of the Cold War in the 1990's. Governments felt obliged and pressed by the demands of emerging minority groups and political movements in Eastern Europe and the increasing mobility and alliances of minority leaders belonging all over Europe. The increasing nationalism of some minority groups in East-Europe was also due to the circumstances of the transition period. There has been a strong tendency to consolidate the state by appealing to the nationalism of the majority people, which again encouraged counter-nationalism by other groups of the state, such for instance the Hungarians living in Slovakia or Romania.² This swept similarly to West-Europe where nationalist groups had already unsuccessfully strived for more independence and secession since two decades, like in Northern Ireland, the Basque Country or in Corsica.

The increasing demands for alliances, self-governance and self-assertion were now on a much larger scale and evidently forced European governments to react. They established and improved the institutional protective and promotional system for these groups. In order to safeguard the current state centered regimes in Europe, state governments in East- and West-Europe took minority policy issues in account and slowly included it in their nation wide policy. Respectively, governments agreed on the supranational and inter-state level, within the European (human) minority rights regime of the CoE, the OSCE and the EU on more protective measures. After 1991/92, when most Eastern European Countries became independent, a number of legal declarations, framework conventions, committees, instruments, catalogues have been declared and ratified in order to protect minority rights by more than 40 states in Europe. In addition to this the United

² See also the introduction by Hugh Miall in: Miall, Hugh (Ed.) *Minority Rights in Europe: The scope for a transitional regime*, London, 1994, p.1.

Nations had elaborated their human rights protective instruments to abstract a more detailed minority protection framework from it. To name some of the legal instruments and declarations after the Cold War in chronological order there are to name: Charter for Regional or Minority Language of the CoE (1992, in force 1998); UN-Declaration on Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities (1992); OSCE-High Commissioner on National Minorities in Europe (1992); CoE-Vienna Declaration and Programme of Action and the Committee for the Protection of National Minorities (1993); EU-Copenhagen Criteria for the EU-enlargement process (1993); CoE-Framework Convention for the Protection of National Minorities (1995); OSCE supported Lund Recommendations of the Effective Participation of National Minorities in Public Life (1999).

Before the political changes in Europe took place during the transition period there had been little efforts in international law to protect minorities. This was also due to the security policy issues of the Cold War and in particular the dictatorial regimes in Eastern Europe. Internationally, minorities had been considered as one vulnerable group among others, like children, women, disabled-people. To mention a few international documents of that time on non-discrimination which can also be applied and linked to minorities, too: CoE-European Convention for Human Rights, Art.14 (1949); The Convention against Genocide (1951), International Covenant on Civil and Political Rights (ICCPR, Art. 27) (1966), UN-Convention on the Elimination of All Forms of Racial Discrimination (1969), Declaration on the Elimination of All Forms of Intolerance and Discriminations Based on Religion or Belief (1981) and more. Article 27 of the ICCPR has been to most far reaching article in international law for the recognition and protection of minority rights. It states some reference to what minority groups might be when it says:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to confess and practice their own religion, or to use their own language.”³.

However, for decades the international law community had worked on a definition of minorities in respect to this article. The latest version of a definition is by the former UN-

³ UN-International Covenant on Civil and Political Rights, 1966, Art. 27.

Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti is drawn up solely in application of article 27 of the ICCPR in mind. In that precise context, the term minority may be taken to refer to:

“A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.⁴

The attempt for defining the term minority has been ongoing since the first Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations in 1953.⁵ Half a century later and with the pressure of new emerging minority groups all over the world the UN declared in 1992 the “Declaration on the Rights of Persons to National or Ethnic, Religious and Linguistic Minorities”. The declaration came in line with numerous other treaties and declarations of that time which also, but not solely, declared that minorities had to be protected, although the declaration has no binding character.⁶

The definition of Capotorti has been the major reference for the European efforts to outline the framework convention of 1995 or declare protective measures for minorities within the CoE and even the European Union. When the member states of the EU drafted the EU-Constitution they also included the EU-Charter for fundamental Rights from 2001

⁴ Capotorti, Francesco: Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, Centre for Human Rights, Geneva, New York, 1991, p.96.

⁵ A good overview over the development and establishment of legal right protective system for minorities is the article of Thornberry, Patrick: An unfinished story of minority rights, in: Bíró, Anna-Mária/ Kovács, Petra (Eds.): Diversity in Action, Local Public Managements if Multi-Ethnic Communities in Central and Eastern Europe, Open Society Institute, Budapest, 2001, p. 47-73.

⁶ To mention some before 1992: UN-Charter 1946, The Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1966, The International Covenant on Economic , Social and Cultural Rights 1966 and a long series of other human rights instruments. See: Alfredsson, Gudmundur: Minority Rights: A summary of existing practice, in: Phillips, Alan/ Rosas, Allan (Eds.): Universal Minority Rights, Abo Akademi, Turku, London, 1997, p.78-80.

and took in article I-2 under the title of “The Union’s values” reference to all “persons belonging to minorities” and under article II-81 with the title of “non-discrimination” reference to the protection of “national minorities”.⁷ Any abuse or discrimination of these articles – although very vague - could be brought in front of the European Court for Justice in Luxemburg – if the EU-Constitutions will ever get ratified by its member states.

Looking back on the legal efforts of the European ministries and governments in protecting minorities in the 1990s, one can state that it was the “decade of defining, drafting and ratifying” protective means on international and state level. Whereas since 2000 we notice great difficulties with implementation, monitoring, understanding of minority rights in Europe and foster their participation. The OSCE Lund Recommendation for active participation in 1999 reflects these problems with the intention of raising political awareness. It goes carefully beyond the purely protective legal character of the European legal instruments which in so many ways had no or little affect on minorities if they don’t know how to use them. It echo’s the fact that there is a lack of self-governance of groups on state level. Hence the Lund Recommendations calls for the “participatory arrangements for national minorities by governments” such as facilitating the participation of minorities in the political sphere through the electoral process. It also asks governments and minority groups to arrange non-territorial or territorial arrangements of self-governance.⁸ Nevertheless, the question is whether the governments take notes of this recommendation within their national boundaries? This depends also on the political will and economic and human resources available to implement them. On the other side the OSCE-Lund Recommendation is limited only to national minorities. Therefore, only those groups who are officially recognized by the governments. Although there are plenty of international recommendations of whom and

⁷ Council of the European union, General Secretariat: Constitution for Europe, as approved by the Intergovernmental Conference on 18 June 2004, Treaties, Volume 1, Brussels, July 2004., p.19, 82.

⁸ App. C with comments, Lund Recommendations on the effective participation of National Minorities in Public Life, in: Bíró, Anna-Mária/ Kovács, Petra (Eds.): Diversity in Action, Local Public Managements if Multi-Ethnic Communities in Central and Eastern Europe, Open Society Institute, Budapest, 2001, p.90-92.

which groups to recognize, the actual recognition policy varies from country to country. And the so called “new minority groups” the migrants, asylum seekers and refugees with an open-ended status, are not considered national minorities. They are not citizens of the countries they live in. In any case, these minorities are not living preliminarily in countries. They already count third or fourth generations, as the migrant-workers in Germany and France or the Russian minorities of the Baltic countries. Thus, they will possibly soon or later take up their “rights” to participate in the society or defining their territory – without seeking citizenship beforehand. Although the right of participation of persons belonging to minorities in the decision-making processes, particularly when the decisions are likely to have an impact upon the group, has been highlighted in international instruments, is insufficient in practice.⁹

This is one of the major obstacles and problems to face in the international legal binding treaty series and declaration systems of today. But even without referring to “new minority” groups in a society, national and recognized minority groups which have – in general – citizenship do not necessarily enjoy or even accept the political and legal framework which is “given to them” by national governments. They protest either against insufficient respect of their language or cultural rights or aiming for more self-governance. Nationalistic and radical movements as the Basque one, has been unsuccessfully treated by the state-governments of Spain. In general the governments were trying to give to the moderate political branch more participatory and political rights. They were encouraged in their efforts to establish social movements, non-governmental organizations and political parties in the 1980s in Western Europe and after 1990 in Eastern Europe, too. However, that was not sufficient and did not stop radical movements from “fighting the central regime”. In some cases, as in Slovakia, the former Slovak minority of Czechoslovakia took the window of opportunity of the turn of the transition period 15 years ago and became peacefully independent from what is today the Czech Republic. Nevertheless, these are sole cases but they serve for other communities and minority leaders as a role model. Hence, what can be learnt from this example, alongside the legal framing on the international level and state centered approach of

⁹ Pentikäinen, Merja: Integration of Minorities into Society, in: Scheinin, Martin/ Toivanen, Reetta: Rethinking non-discrimination and Minority Rights, Abo Akademi, Deutsches Institut für Menschenrechte, Turku, Berlin, 2004, p. 100.

minority protection, is the fact that minority groups and leaders do not have to wait to be slowly integrated by the dominant and majority leading government of one country. They can – as the case of Slovakia has shown - become independent without waiting one or two generation until their integration in the rest of society might be completed – or not. The example of Slovakia has been a tempting and disputed model. It encourages in some cases radical political movements like the ETA in the Basque Country. Their strive for quick independence and international recognition can even lead to civil war as we have seen on the Balkans.

The major problem of radical movements which take little or no notice of legal framework, international instruments or changes in their favor in domestic politics is the fact that they ground their identity in something that is beyond the nation state. This identity is mainly historically or emotional. Some minority groups are failing in taking account the slow changes or transformation process in favor of their needs, such as regional autonomy, federal structures, affirmative actions and cultural promotion programs. In contrary, these minority groups and their leaders ground their “right” to fight the central power with all means based on historical injustice that had happened to them sometimes decades and centuries ago. They justify their identity with being a victim of past or present injustice. Adding it with ethnical, language or custom difference they do not accept reconciliation or more “rights” and will therefore simply not accept to live in the boundaries of the “perpetrator” state. Here it is, where the human rights aspects is relevant.

Human Rights and Political Movements

Human rights become increasingly important for the minority movement in Europe and elsewhere. This is also based on the fact that the protection regime of minorities is part of the European human rights regime, which is legally and political based in the standard settings and decision making processes of the CoE, the UN, the OSCE and EU. Correspondingly, human rights came in the debate about minorities, when minority groups realized that they had “rights” and that these rights where abused or abducted.

Understanding ethnicity and being a minority was strongly discussed after the Second World War when equal citizenship and human rights were brought up as fundamental pillars for stable democracies. In the consequence it was meant to be that minorities – as long as they were citizens' of a country – had human rights and therefore were to be treated equally.¹⁰ But the real usage of human rights by minority group leaders came alongside the wave of transition and human rights movements in Eastern Europe in the late 1980's and beginning of 1990's. A change in awareness took place and the ignorance of minority rights, namely to protect their language and traditions, had to be overcome by promoting anti-discrimination measures and participatory instruments in society.

Hence, the political and social movements of minority groups do not only fight against inequality, symbolized by the central government and their authorities, but also for a wider societal recognition. Consequently from a human rights perspective, two purposes should be kept separate: The protection of members of vulnerable groups and the accommodation between minority groups and removal of unnecessary blockage against group self-assertion.¹¹ About the first there is little to dispute. One can generally agree that people belonging to minority groups have the right to enjoy their cultural, language and religious rights and get wide societal and political recognition for it. The second distinction is much more complicated and political. How far can and should a central power give in to self-governance and separateness of a group living within their state boundaries? This question always goes hand in hand with the responsibility of state governments. It is their responsibility not only to protect and promote its minority groups but also to protect and promote people belonging to other societal groups in a given country. Minority rights have always to be balanced against justified concerns of other members of society, too. From a human rights perspective the question of minority protection and promotion can only be seen in conjunction with the human rights of non-

¹⁰ Kemp, Walter: Minderheiten im größer werdenden Europa: Integration und kultureller Pluralismus, in Deutsches Institut für Menschenrechte, u.a. (Eds.): Jahrbuch Menschenrechte 2004, Frankfurt a.M, 2003, p. 66-67.

¹¹ Eide, Asbjørn: Minority Protection and World Order: Towards a Framework for law and policy, in: Phillips, Alan/ Rosas, Allan (Eds.): Universal Minority Rights, Abo Akademi University Institute for Human Rights, Turku, 2001, p.87.

minorities. Otherwise the human rights argumentation will be exclusive and not inclusive. Exclusiveness of minority rights would in any case be in contradiction to the main idea of human rights namely that all people should benefit from them equally. This also raises the questions, if states institutions can provide this equality or if this can only be reached on the inter-state and international level?

Quite commonly the process of ethnic mobilization is kick-started by a sense of economic and social grievance and by allegations of discriminatory treatment by the state authorities. This phase, as Coakley defines, is thus characterized by a demand for equality of all citizens. Or as Eide puts it, the phase in which minority group's primary struggle is for equal enjoyment of civil, economic, and social rights.¹² The second phase refers to the demands of minority leaders for recognition of its separateness. This is probably the most radical and diverse phase, because while other members of the minority groups might already be satisfied with the attainment of at least formal equality and ethnic self-consciousness, the demand for recognition can lead to more.¹³ The basic demands lie within the human rights frame. These are, as Coakley describes, (1) the demand for equality of citizenships, ranging from a call for formal equality before the law to a demand for special measures to ensure economic and social equality. It is also the demand for cultural human rights, ranging from symbolic use of the minority language in public to the right to transact business with all public institutions in a given country in this minority language. The next demand would be for institutional political recognition, ranging from symbolic autonomy in local government to symbolic representation in state institutions, to fully-fledged confederalism. And last the radical demand for secession. This is ranging from frontier adjustment to allow the minority to be incorporated in a neighboring state, to independence as a separate state.¹⁴ Coakley's observations are helpful

¹² Eide, Asbjørn: *Minority Protection and World Order: Towards a Framework for law and policy*, in: Phillips, Alan/ Rosas, Allan (Eds.): *Universal Minority Rights*, Abo Akademi University Institute for Human Rights, Turku, 2001, p. 97.

¹³ Coakley, John: *Ethnic Minorities, Political Protest and the Challenge to the Contemporary State*, in: *Bulletin of the International Political Science Association*, titled „Participation“, Vol. 28, Winter 2004, p.11-13.

¹⁴ *Ibid*, p.12-13.

to understand the variety of actors of political minority movements, although it leaves open whether minority leaders are legitimized to go beyond the commonly and legally supported demand of attaining equality and governmental supported?

Today, however, the majority of political leaders of minority groups base their demands, on human rights. This might hide political secessionism as in the case of the Basque nationalist movement. When in 2004/2005 the Basque Nationalist Party (Partido Nacionalista del Pais Vasco, PNV) passed the “New Constitution for the Basque Country” also called the “Plan Ibarretxe” named after the President of the Basque Country and father of the constitutional draft, Juan José Ibarretxe, he introduced it as a document that is not only the result of taking the human rights (e.g. right to self determination) of the Basque people into account but also to protect human rights of all. In this case the “plan” refers to the Universal Declaration for Human Rights in 1948.¹⁵ The first chapters of the “plan” is on human rights, only later in the draft it becomes clear that the main purpose of it was to become slowly independent from Spain and to form a separate state together with the Basque regions in France. The “plan” did not succeed at this stage, since the PNV lost its absolute majority in the regional parliament with the elections in April 2005. However, what is striking is the argument, that the strive for separateness and independence is argued as in the interest off all human beings in the Basque region, even though they are not Basques and do not want to become separate from Spain. It is a challenge for political leaders on both sides - the central authorities and the minority representatives - that in order to protect and promote minority rights in terms of self-governance it has to go in agreement with the majority of other societal groups of the state or a particular region. Indeed the way to argue should be to say that minorities should enjoy their rights, self-determination and promotion of their cultural rights as a benefit for a whole society regardless of how this society might be composed.

¹⁵ Gobierno Vasco: Estatuo Político da la Comunidad de Euskadi, Propuesta de reforma de Estatuto Político de la Comunidad de Euskadi aprobada por la mayoría absoluta del Parlamento Vasco en el Pleno celebrado el 30 de dicimbre de 2004, Vitoria, December 2004.

Minority leaders have learned from the mistakes of last decades and know that in order to gain any support and achieve peacefully more autonomy and independence they have to make reference in their statements to other groups or the majority of people living in the same country. Thus they will seek a larger constituency and easier recognition for their political agenda. Minorities define their rights as human rights, being abstracted from, additional or supplementary to the human rights catalogue and international human rights regime. In particular using the legal and political human rights framework of the European human rights regime, these political leaders have learned to outline more clearly the (human) rights aspects of minority groups. This again helped new emerging groups to define and “to find” their separateness of others. Because the simple fact, that they “have” human rights and are by law equal to other groups of society, remains a new idea of the second half of the last century and is not older than two generations. Human rights awareness helps gaining self-consciousness and self-assertion but it raises also the problem to define how and why minorities are really different from other groups?

At the same time minority leaders use political human rights to free assembly, elections and/or political participation in order to increase their participatory activities on both national and international levels. This again led to an increasing activity of establishing minority movements, building up associations and NGOs. These political entities have also the intention to empower their constituency and to increase the number of followers and activists. This empowerment can range from simply demanding more economic and social equality to promotional support and territorial secession. In latter case the claims of these group leaders can be again in contradiction with other groups, and their human rights, living in the same territory or society.

If on the state level political minority leaders are not successful achieving their goals they might direct themselves to European institutions. State authorities sometimes prefer minority groups to use the inter-governmental institutions in Europe rather than the national one. This is recommendable in countries where institutional racism and the absence of constitutional reforms do not allow changing an institutional culture, for example the one of police forces, when dealing with groups that are generally

discriminated against on racial or ethnic grounds.¹⁶ Therefore, group leaders are recommended to contact European institutions in order to put pressure on the national level to change institutional culture.

The political binding and dialogue orientated institution of the OSCE-High Commissioner for Minorities in Europe might be one option. Although, however, with many restrictions because he is not obliged to take cases of minority leaders who allegedly represent radical or terrorist groups as well as Roma. The CoE is composed as a reporting and monitoring system. States have to submit regular report for example to the Advisory Committee of the Framework Convention from 1995. The Advisory Committee of the Framework Convention for the Protection of National Minorities can only transmit its opinions, conclusions and recommendation to the CoE' Committee of Ministries, whose delegates than again have the responsibility to act accordingly in their states. Different from this, the High Commissioner for Human Rights of the CoE can take case of discrimination with reference to minority rights. This would also be the case of the CoE-European Court for Human Rights in Strasbourg, although there have been only few cases in the last decades referring to discrimination in article 14. It has no independent character, it can only be used in conjunction with an other articles of the European Convention for Human Rights. In any case European institutions such as the ombudsmen or the committees are merely reporting, monitoring and recommending bodies, but do not enforce minority rights. Neither do they give minority group leaders the possibility to participate politically. Nevertheless, minorities use the legal framework as their basis for political self-consciousness.

The only institution who is able to provide active participatory means on behalf/ or for minority leaders is the European Parliament – although, however, only for those minority groups which are based in one of the 25 member states of the EU. The EU itself has increasingly articulated its aspiration to represent democratic values culminating with the adoption of political criteria for EU membership at the Copenhagen Council in 1993,

¹⁶ Pérez-Solla, María Fernanda: What's wrong with minority rights in Europe? On EUMAP webside of Open Society Institute's EU-Monitoring and Advocacy Program (EUMAP), Budapest, <http://www.eumap.org/journal/features/2002/nov02/minrightsineu/> , from June 2005.

including “respect for and protection of minorities”. The Copenhagen Criteria explicitly mentioned minority rights and promotion for the first time in the EU-history. However, because the EU-Constitution is far away from being ratified and getting into force there are no explicit and binding minority protection standards on the EU-level as of today.

In the EU-parliament there is no quota system for minority representatives and thus no distinction of members of parliament belonging to a minority groups or not. But the parliament is still a place in which political parties representing nationalistic views can participate actively in the decision making process of the EU. And since 2000 the parliament has taken the lead in adopting yearly reports on the situation of fundamental rights within the EU, including minority rights.¹⁷ Parliamentary groups which stand for interests of minorities are the “Union for Europe of Nations” composed for example of members from the Italian Nationalist Party, *Allianza Nazionale* or the Danish Peoples Party, *Dansk Folkeparti*. And the “European Free Alliance” in the EU-Parliament which is composed of more than 30 nationalist parties, among them for example the Scottish Nationalist Party, the Lithuanian Polish People’s Party, the Party for German speaking Belgians or the Nationalist Party of the Basque Country with observer status.¹⁸ They are standing for the rights of stateless nations and people in Europe and for more social standards and equality.

Their presence in the EU-parliament and in European institutions shows that minority groups and leaders are in a constant dilemma. If they get democratically elected in a representative institution like the EU-parliament, they also have to deal with aspects that not only reflect the problems of their minority groups but other groups of society, too.

Hence what the EU and the parliament offer is not independence but interdependence. EU-member states depend in the Union just as they depend on their regions. And the EU in turn is not only in need of member states’ policy-consensus but also of the efficient transposition of EU decisions, namely law, at the regional level and legitimizing approval

¹⁷ Hoffmeister, Frank: *Minority protection and the enlarged European Union*, in: Toggenburg, Gabriel N.: *Minority Protection and the enlarged European Union: the way forward*, Open Society Institute, Budapest, 2004, p.101.

¹⁸ European Free Alliances (EFA): <http://www.efa-dppe.org> (June 2005)

by powerful regions.¹⁹ Taking this into consideration one can say that the idea of the “Europe of Regions” of the 1990s as an inter-state/region conflict solving model is still a challenging task and worth of rethinking – if minority issues are taken into consideration. Because all this does not alter the general picture that in constitutional terms the regions still remain primarily regions of states. Nevertheless the supranational and inter-governmental characters of the European institutions are already reasons enough for minorities to consider the integration process a useful phenomenon. The EU provides the most useful tools for this integration process on the inter-state and regional level, political and consultative participation through the parliament or monitoring and advisory committees. In addition to parliamentary participation minorities have the option to be consultants or lobbyist. Those who form radical groups outside society are excluded from any decision making process. Lobbyists are non-governmental organizations like the Federal Union of European Nationalities (FUEN) in Flensburg which represents 81 member organizations and minority groups from 32 states in Europe. FUEN has increased its influence during the last decades.²⁰ The 1949 founded NGO lobbies today mainly to European institutions in order to pursue their goal of preserving their national identities, their language, culture and history. The main institution to lobby is the European Parliament, the OSCE office of the High Commissioner for Minority Protection and the Council of Europe. They have consultative status with the Council of Europe and a regularly representation during the OSCE conferences. Their influence is not to be underestimated and as many other NGOs, too, they decisively take a stand against separatism and the violent moving of national borders. Well organized NGOs such as the „European Roma Rights Centre” (ERRC) in Budapest is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma.²¹ This NGO claims also to monitor and to represent the rights of more than eight million Roma living in Europe. They publish regularly reports

¹⁹ Toggenburg, Gabriel N.: Minority Protection in a supranational context: limits and opportunities, in: Toggenburg, Gabriel N.: Minority Protection and the enlarged European Union: the way forward, Open Society Institute, Budapest, 2004, p.17.

²⁰ Federal Union of European Nationalities, <http://www.fuen.org> (June 2005)

²¹ Roma Rights Center in Budapest: <http://www.errc.org> (June 2005)

and lobby intensively to the European institutions. Seemingly does the “European Bureau for lesser used languages” (EBLUL) in Brussels, although it is EU funded. EBLUL takes part in projects financed by EU as well as specific projects subsidised by governments and regional and local authorities of many EU Member States.²² There are also a number of service orientated NGOs and centres which provide information and monitor minority rights and racism in Europe, for example the “European Union Monitoring Centre on Racism and Xenophobia” (EUMC) in Vienna. The primary task of the EUMC is to provide the EU member states with data on racism, xenophobia and anti-Semitic phenomena at the European level in order to establish measures or actions against racism and xenophobia.²³

Thus, what distinguishes the European institutions from national ones is not the institutional and bureaucratic system as such but their compliance towards the protection and promotion of minorities. Their goal is integration on a European level and not independence as such. The institutional purpose is to set minority standards (CoE, UNO), to support numerous promotional programs (EU) and to monitor the developments of minorities in Europe (OSCE). Because of this European institutions have obtained higher credibility and accessibility than national governmental authorities. Declaring and drafting minority rights in high numbers in the 1990's has shown that there was a political will in the international level to change the situation of minorities. At the same time the new “minority rights and promotion regime” has been able to solve problems of minorities in a way in which nation states' are not able to do it, either because of national political or constitutional and institutional barriers. Consequently, this minority rights protection and promotion regime has also created a new identity among minority groups in Europe which is part of the conflict solving mechanism of today.

²² The European Bureau for lesser used languages: <http://www.eblul-bic.be> (June 2005)

²³ The European Union Monitoring Centre on Racism and Xenophobia
http://europa.eu.int/agencies/eumc/index_en.htm (June 2005)

Political Identity of Minorities

The provision of minority and human rights, the definition of the legal term “minority” in the different European treaties, declarations and recommendations and the concrete application of this definition to minorities are external factors for a strong and “new” identity of minorities in Europe.²⁴ These steps were important because they eased down the most problematic and toughest identity internal factor of minority identity, namely their identification with history and the in-just treatment in the past. Feeling the sense of injustice and being a “victim” is one of the strongest identity building elements in European minority groups, stronger than language difference, territory and/ or ethnic heritage. However, there is no group which just shares one identity element. Identities are multi-complex and in many cases irrational and very emotional. This is one of the challenges which are difficult for European institutions to deal with. The European minority rights regime mirrors the “injustice and inequality of the past” when drafting the protective instruments. These legal means have led to improvement of the situation of minorities and at the same time to self-consciousness, self-alignment and hence more involvement of minority groups both on state and the inter-state level.²⁵

The “new minority movement” or “minority regime” in Europe is also the result of the European integration and enlargement process of the 1990’s. This integration and enlargements process is rooted in the European human rights regime which in turn shapes the new identity of minorities. And as Schöpflin argues, the rise of the discourse of

²⁴ Toggenburg, Gabriel N.: *Minority Protection in a supranational context: limits and opportunities*, in: Toggenburg, Gabriel N.: *Minority Protection and the enlarged European Union: the way forward*, Open Society Institute, Budapest, 2004, p.9.

²⁵ Countless articles and books have been published on the identity of minorities and groups. The all have in common the fact that this groups identity is formed by internal and external factors such as history and political participation. See for example Jenkins, Brian/ Spyros A. Sofos (Eds.): *Nation and Identity in Contemporary Europe*, London, 1996; or: Taras/ Rey (Ed.): *National Identities and Ethnic Minorities in Eastern Europe*, London, 1998.

human rights has a direct bearing on the fate of minorities.²⁶ They are very much included in human rights norms as a matter of principle. They sense they have the right to use their languages or practice their religion without being discriminated against. Group leaders use political and civil human rights as a ground for the political involvement as politicians or members of NGOs without feeling any inferior to other groups or the majority. They are fully aware that both politically and legally minorities have acquired a protection that is denser and more effective than any time in the past. The adoption of democracy throughout Europe, even where it is functioning is imperfect, establishes far greater space for innovation and political participation than ever before. The knowledge about minority rights, free access to information, free assembly and the protective and monitoring system on the CoE and OSCE level has enhanced minorities and their leaders to ask for new forms of participation, changes and institutions on national and intra-state level.

What I would call a new minority identity based on empowerment through European institutions and legal instruments, leads to more political participation and alliances. Minority group leaders know their rights, know where to claim them and know how to participate in the institutions. There is more trust, however, in the European institutions to solve their problems of recognition and participation, than in national institutions. The past has shown to them that they can not necessarily trust state authorities, who might promise to fight discrimination but not necessarily do it. On the other hand, political leaders, for example the leadership of the Basque PNV, still have experienced personal suppression by the Franco regime till 1975 and because they feel as “victims” they still have little or no trust in current Spanish institutions. Correspondently I argue that they prefer to go directly to the supranational level, to participate, lobby and gain access to decision making bodies on the EU and the CoE level in order to get support. With this support they want to put pressure on the state-regime. This is linked with the aspiration that European institutions will support their petition for more self-governance. European institutions – with all their shortcomings – enjoy therefore higher credibility because first,

²⁶ Schöpflin, Georg: Minorities and democracy, in: Bíró, Anna-Mária/ Kovács, Petra (Eds.): Diversity in Action, Local Public Managements in Multi-Ethnic Communities in Central and Eastern Europe, Open Society Institute, Budapest, 2001, p.18.

they have actually established minority rights protective and monitoring standards and institutions; and secondly, there is not yet any negative experience of abusing their competences against minorities as such. Actually, European institutions did at least “something” for them. This led to governmental and institutional reforms in some countries. Hence, European institutions, according to any regime analyses, have the aspiration to solve problems and integrate the claims of minorities. Even nationalist representatives prefer to be presented in the European parliament and represent their “region” and/ or rather than in state parliaments. Because some states, for example Great Britain and Spain, do not reflect sufficiently the demands of minorities in their constitutions or domestic law. Because of this deficit some states, as Spain or Slovakia face problems today which weaken internal peace and stability, but as I want to argue can only be solved on the supranational level.

Conclusion

The European institutional framework, the increasing human and minority rights awareness and a strong and self-conscious identity of minority leader have led to more participation on supranational level in order to define conflict areas and propose solutions. The process is slow, although it was speeding up rapidly in the 1990s. This was the only way to establish and safeguard democratic standards for minorities in Europe and keep peace and stability for that time. However, after the “decade of drafting and ratifying” minority standards in the 1990’s, the petitions and demands of minority leaders might become more complex and challenging in the future.

But in general, minority leaders came to the conclusion that integration on the European level is better than secession as long as their needs and demands for more self-governance are given credit. The demand for secession as a last resort gets less support in minority communities, because their needs are taken up by the supranational level. Although there remain conflict areas of radical minority groups, politically or by using violence, in order to aim secession. The only peaceful way to solve these problems will be the use the European institutions more efficiently and at the same time improve European participatory mechanisms. There will be no solution on the national-state level

alone. Hence, the solution to many of the problems of minority movements and identity is multi-levelled. Some groups already benefit from the legal, protective, monitoring and participatory instruments of the EU, OSCE and CoE; some only from CoE and OSCE and some only from OSCE and the way it is implemented on the state level. Although all these institutions have shortcomings because their member states had been cautious not to give them too many competencies, they enjoy higher credibility than states in being able to solve current problems of (a) promotion and protection of cultural rights, like language, religion and tradition and (b) direct participation and consultation, which in so many cases is more than minority groups would achieve in their “home-countries”. The main challenge for the European institutions remains to overcome the mostly irrational demands of minority leaders to become independent because of in-just experience in the past caused by state authorities and consequently distrust in these authorities. One way to overcome this is to include the political branches of these groups more actively in the European democratic decision-making processes. In this they have to take political responsibility also for people not belonging to their community but with whom they claim they want peacefully live together – the rest of the European people.

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