

## EU MINORITY PROTECTION POLICY: TALKS ABOUT NOTHING OR POSITIVE DEVELOPMENT TRENDS?

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### 1. Introduction

The issue of national minority protection is a quite controversial issue at the international arena. Under the term “minority” national, ethnic, linguistic, religious and other minorities are understood in most cases, and there are several suggestions in order to determine the term, as far as there is no internationally recognized definition for it. As an essential element of the paper, it also lists three, internationally relevant minority definitions.

One of these is probably the most well known and used, oft-cited Capotorti minority definition stating that the minority is

“a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>1</sup>

From sociological point of view, sociologist Louis Wirth defined a minority group as

“any group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential

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<sup>1</sup> Francesco CAPOTORTI: *The Protection of Minorities under Multilateral Agreements on Human Rights. The Italian Yearbook of International Law* (1976), II, 14; and IDEM: *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. Geneva UN Center for Human Rights, UN Doc E/CN.4/Sub.2/384/Add.1–7.

and unequal treatment, and who therefore regard themselves as objects of collective discrimination.”<sup>2</sup>

In Organization for Security and Co-operation in Europe documents the

“national minority is generally understood to mean a non-dominant population that is a numerical minority within a State but that shares the same nationality/ethnicity as the population constituting a numerical majority in another, often neighboring or »kin«, State.”<sup>3</sup>

It is not the aim of the paper to give a historical overview about the development of minority protection; at this point only, some milestones will be presented in order to see the overall picture of the topic. Minority protection is not a new “invention” because it can be traced back to the seventeenth century. For instance, in the Treaty of Westphalia (1648) special rights for religious minorities were incorporated; and in the nineteenth century the three great congresses of Vienna (1814-15), Paris (1856) and Berlin (1878) secured minority protection provisions in their treaties. However, the real breakthrough came after the First and Second World War<sup>4</sup> when the border changes (after the First World War) resulted the appearance of new minorities. In order to avoid conflicts and for recognizing the rights of these minorities, the League of Nations was established. Some countries incorporated different minority obligations in General Peace Treaties, in other cases minority protection obligations were accepted outside of these treaties.<sup>5</sup>

The League of Nations, although being a genuine international organization, was also often biased towards state interests,<sup>6</sup> and so its effort to provide an effective

<sup>2</sup> Christian JOPPE: Minority Rights for Immigrants? Multiculturalism versus Antidiscrimination. *Israel Law Review*, Volume 43., N. 49., 49.

<sup>3</sup> United Nations Guide for Minorities: <http://www.ohchr.org/Documents/Publications/GuideMinorities9en.pdf>,

<sup>4</sup> Antonija PETRICUSIC: The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations. *Croatian International Relations Review*, Vol. XI., No. 38/39., (2005) 2.

<sup>5</sup> Peter HILPOLD: The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment. In: *Max Planck Yearbook of United Nations Law*. 2013. 87., 90. See also other well-know experts of the topic e.g. SÁNDOR-SZALAY, E.: *A kisebbségvédelem nemzetközi jogi intézményrendszere a 20. században. (Institutional structure of minority protection from the aspects of international law in the 20th century.)* Budapest, Gondolat–HAS Institute for Minority Studies, 2003. P. Kovács: The Protection of Minorities under the Auspices of the League of Nations. In: *The Oxford Handbook of International Human Rights Law*. New York, Oxford University Press, 2013. 305–341.; C. FINK: The League of Nations and the Minorities Question. *World Affairs*, Vol. 157., No. 4., (1995) 197–205.; J. JACKSON PREECE: Minority Rights In Europe: From Westphalia to Helsinki. *Review of International Studies*, 23/1., (1997) 75–93.; Ch. RAITZ VON FRENTZ: *A Lesson Forgotten: Minority Protection under the League of Nations. The Case of German Minority in Poland, 1920–1923*. Berlin–Hamburg–Münster, LIT Verlag, 1999.

<sup>6</sup> HILPOLD op. cit. 91.

minority protection system has failed. After the Second World War the United Nations system came into existence giving rise mainly for human rights, and also contained regulations about the recognition of minority rights.<sup>7</sup>

In case one considers the minority protection of the European Union, the question often comes up in connection with national or traditional minorities. It is a delicate issue not only because member States are not equally concerned about national minorities and some countries neglect the issues because of political and other reasons, but also because of complex situation of national minorities having different historical background, political and legal aims. According to *Federal Union of European Nationalities* (FUEN), the umbrella organization of the autochthonous, national minorities and ethnic groups in Europe, there are more than 400 European minorities in Europe. One person from seven Europeans belongs to an autochthonous minority or speaks a regional or minority language; and besides of 28 official languages of the European Union there are more than 60 regional and minority languages in Europe with total number of 40 million speakers. There are 90 languages in Europe; 37 of these are national languages, and 53 languages are regarded as “languages without a state”.<sup>8</sup>

It is undeniable that dealing with the problematics of national minorities should have bigger importance in the EU, however, as mentioned, member States have differing opinions about the topic, and also it does not belong to pressing problems to be resolved. In fact, the EU, as a whole, deals with most urgent issues such as economic situation, migration or high-level politics; the situation of national minorities is not on the agenda most of the time.

Furthermore, a significant difference among EU member States is their diverse historical background resulting differing number of minorities on their territories. It influences the political and legal attitude towards this group of the society as well, some states being permissive, and other restrictive, or in other words some are following assimilatory, and some integration tendencies and means towards minorities.

However, the paper focuses particularly on the EU as a whole, and not on different countries separately. In the followings the instruments relevant from minority protection point of view will be mentioned and analyzed shortly, being the only legal reference points for people belonging to national (and other) minority groups.

## **2. Instruments of minority protection policy of the European Union**

If one considers the position of national minorities, mainly in the 1990s and after the new millennium, it is definite that their situation has changed significantly after the dissolution of the Soviet Union in 1991, of Czechoslovakia in 1993, and as a consequence of the breakup of Yugoslavia. High number of national minorities remained in the newly founded states because of border changes and partitions trying to fight out the

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<sup>7</sup> PETRICUSIC op. cit. 2.

<sup>8</sup> Official website of the Federal Union of European Nationalities; for more information see <https://www.fuen.org/european-minorities/general/>

recognition of their rights in the home countries, also fighting against discrimination of any kind.

However, apart of the EU, but in the 1990s particularly important and internationally relevant normative instruments came into existence. To give some examples, in Council of Europe framework the *European Charter for Regional or Minority Languages* (1992) and the *Framework Convention for Protection of National Minorities* (1995), or in the UN framework the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992).

Remaining at the European Union's approach towards the rights of minorities, the years of the 1990s have brought several changes there as well. The *Copenhagen criteria* (or the Accession criteria), established by the Copenhagen European Council in 1993, sets out the basic conditions that has to be met for admission to the EU (strengthened by the Treaty on European Union Article 49, and Article 6(1)). The first of these criteria is the stability of institutions guaranteeing democracy, the rule of law, human rights and *respect for and protection of minorities*. Furthermore, a country must meet this first criterion in order to start accession negotiations. However, the birthplace of the mentioned elements was not Copenhagen, but the importance of democratic structures and human rights was emphasized since the foundation of OSCE framework (Organization for Security and Co-operation in Europe; its roots founded at the 1973 Conference on Security and Co-operation in Europe). Also, there has been a flood of Copenhagen-related documents, mostly produced by the Commission; for instance opinions, progress reports, composite papers, strategy papers and regular reports, all referring to the Copenhagen criteria to some extent.<sup>9</sup>

For Central and Eastern European countries these criteria had to be fulfilled before the accession period creating, according to many experts, some sort of "double standard mechanism" at the institution, as far as member States did not have to keep themselves to the mentioned conditions, nor were they asked to close up and realize it concerning their home societies.

In this vein, the *Charter of Fundamental Rights of the European Union*, proclaimed in 2000 (and becoming legally binding with the entry into force of the Treaty of Lisbon in December 2009), became an important milestone, as far as the rights of every individual within the EU were established at different times, in different ways and in different forms. This was the reason why the EU decided to clarify things and to include them all in a single document that has been updated in the light of changes in society, social progress and scientific and technological developments.<sup>10</sup> The provisions of Charter must be applied by the institutions and bodies of the EU with due regard for the principle of subsidiarity, and also by the national authorities of the member States, but only in case they are implementing EU law. The Charter makes the nature of minorities more accurate: it talks about *national minorities*. Mentioning the term

<sup>9</sup> Tanja MARKTLER: The Power of the Copenhagen Criteria. *Croatian Yearbook on European Law and Policy*, N. 2. (2006) 345., 347. <http://www.cyelp.com/index.php/cyelp/article/viewFile/23/22>

<sup>10</sup> European Commission's official website: [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

‘national minority’ is important because it have become a part of EU law that is going to be interpreted in the future. One possible obstacle of the Charter, in connection with minority rights, is that the addressed parties are EU bodies and institutions, as well as member States, but only if they bring EU law into effect. It means that possible discriminatory actions of a member State towards minorities can be abolished only in case if the mentioned state action or provision has EU source or component.<sup>11</sup>

*Article 21* of the Charter pronounces the prohibition of discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.<sup>12</sup> However, the Charter does not contain special examples for the discrimination mentioned above; neither defines the term minority. The text of Article 21 is also very similar to other provisions that generally describe the desired goal in order to protect minorities. Paragraph 1 draws on *Article 19* of the Treaty on the Functioning of the European Union according to which the Council, with the consent of the European Parliament, may take actions in order to combat discrimination based on sex, racial or ethnic origin, etc.<sup>13</sup> Between the two provisions a particular difference can be observed, however according to the official explanations of the Charter, these two phrases are not in contradiction. Article 19 has a different scope and purpose conferring power on the Union to adopt legislative acts, including harmonization of the Member States’ laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article at any area within the limits of the Union’s powers. In contrast, the provision in Article 21(1) does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it prohibit discrimination in such wide-ranging areas; it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they

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<sup>11</sup> CZIKA, Tihámér: A kisebbségi jogok kérdése az EU-jogban Lisszabon után. (The topic of minority rights in the EU after Lisbon.) In: *Európai kisebbségekért*. Budapest, EU-Grund Kft., 2009. 104. (author’s own translation).

<sup>12</sup> *Charter of Fundamental Rights of the European Union*, (2007/C 303/01), Article 21: “1. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited”.

<sup>13</sup> 1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. 2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of the Union’s incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article 19 nor the interpretation given to that Article.<sup>14</sup>

Going further, and beside of the mentioned achievements, *Article 2* of the *Treaty on European Union (TEU)* speaks about the values of the European Union, including the respect for human dignity, freedom, democracy, equality, the rule of law, respect of human rights, including the rights of persons belonging to minorities.<sup>15</sup> As it can be seen the Union considers the respect of minority rights as a value that has to be protected, however here can be observed as well that specific guidelines or defined procedures are missing in order to reach the mentioned goals in member countries.

The other problem with the expression in Article 2 is that it does not define the nature of minority. Is it really about the rights of national, ethnic, linguistic, racial or immigrant minorities? On the one hand, this standing can serve as a benefit because it does not go into questions of interpretation existing since long decades, but on the other hand, it also means a disadvantage making intendment more difficult.<sup>16</sup>

*Article 7* of the Treaty relates closely to the mentioned Article 2, as far as it declares that on a reasoned proposal by one third of the member States, by the Parliament, Commission or the Council it can be determined whether there is a clear risk of serious breach by a member State of the values set in Article 2<sup>17</sup>. In case the determination has been made, the Council may suspend certain rights of the member State in question, such as voting rights of its representative of the government in the Council.<sup>18</sup> The paragraph poses several issues; on the one hand, the absence of clear and more detailed specification of rights of persons belonging to minorities, for instance, makes it difficult to enforce these rights in many cases. On the other hand, some are on the opinion that the paragraph serves only as a “deterrence” for member States, but the Council would not apply it because it would cause the disruption of the balance in the EU.

<sup>14</sup> Explanations relating to the Charter of Fundamental Rights, Official Journal of the European Union (OJEU). 14.12.2007, No C 303. [s.l.], Explanation on Article 21 — Non-discrimination, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:EN:PDF>

<sup>15</sup> “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” (Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01, Article 2.)

<sup>16</sup> CZIKA op. cit. 100. (author’s own translation).

<sup>17</sup> 1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

<sup>18</sup> 3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The Commission in its explanation declares that Article 7 “seeks to secure respect for the conditions of Union membership. There would be something paradoxical about confining the Union’s possibilities of action to the areas covered by Union law and asking it to ignore serious breaches in areas of national jurisdiction. If a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine the very foundations of the Union and the trust between its members, whatever the field in which the breach occurs”.<sup>19</sup>

According to Kochenov, the provision speaks of the suspension of ‘certain rights deriving from the application of the Treaty’, and it is clear that the sanctions can be economic and non-economic in nature as well. However, the academic literature is skeptic about the effect of the sanctions, in cases when a Member State is heavily reliant on EU funds and the prestige of the EU Institutions these could probably bring the desired effect, even though there is no successful example to cite here, since Article 7(3) TEU has never been invoked. It is unique in a sense that it established the procedures for stating the threat of a breach of EU values by a Member State, the existence of such breach, and also the possible sanctioning mechanism.<sup>20</sup>

In connection with the above-mentioned human rights and fundamental freedoms, *Article 6* of the Treaty on European Union deserves attention as well; stating that the EU should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but is shall not affect the Union’s competences defined in the Treaties. The Article goes on to say that these fundamental rights, guaranteed by the European Convention shall constitute general principles of the EU’ law because they result from the constitutional traditions of member States.<sup>21</sup>

The European Convention on Human Rights (ECHR), drafted by Council of Europe, was opened for signature from 1950 and came into force in 1953. The parties of the Convention are Council of Europe member States, so a certain interconnection can be observed between the EU and the Council of Europe, and it is undeniable that the EU has taken several steps forward to secure and highlight the protection of fundamental rights. Furthermore, Article 6(3) TEU states that the fundamental rights resulting from the ECHR “shall constitute general principles of the Union’s law”. It means that the ECHR will in the majority of cases be essential for the understanding of the fundamental rights at issue, without necessarily being essential for the finding of a violation of a fundamental right on the part of the Member State. The ECJ itself will be bound by the provisions of the ECHR, and will have to take into account the provisions of the Convention, also when determining Member States’ obligations with respect

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<sup>19</sup> European Commission, ‘Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based’ [2003] (COM(2003) 606 final), 5.

<sup>20</sup> Dimitry KOCHENOV: Busting the myths nuclear: A commentary on Article 7 TEU. *EUI Working Papers*, Law 2017/10, Department of Law, 10–11.

<sup>21</sup> 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties. 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.

to fundamental rights protection under Union law. Otherwise, the ECJ would risk not respecting its obligations as an EU institution. The likely outcome of this “dilemma” for the ECJ is that, in the majority of cases, the ECJ will interpret the provisions of the Charter as being identical to the corresponding provisions of the ECHR.<sup>22</sup> On that way Council of Europe and EU guidelines converge to each other, or better, the practice would become interrelated at some level.

The above mentioned achievements of the EU show the institution’s gradual effort mainly in combating discrimination and respecting minority rights of national and other minorities, in general, however one cannot talk about precisely identified practices towards them. The following part of the essay deals specifically with traditional/ autochthonous or ethnic minorities of the EU, belonging evidently to the category of minorities, but additionally possessing different characteristics and being in a special situation.

### 2.1. Traditional or ethnic minorities of the European Union

It is a well-known fact that in Europe most countries have differing number of minority groups or minority population living on their territories. The majority of these countries has minority population below 20 per cent of the total population; but 11 countries have a larger proportion of ethnic minorities. The origins of these minority communities are different; they have national, transnational, indigenous or immigrant background and roots which means different characteristics as well, as mentioned above.

*National or traditional minorities* live in a territory of a host-state, but they are simultaneously ethnic kins of the titular nation of another, often neighboring, kin-state.<sup>23</sup> On that way they are historically, emotionally and ethnically connected to that particular state, to their nation, also maintaining wide-ranging relations with the home state.

The rights and position of national minorities has to be distinguished from the situation of new, migrant minorities; however, this difference is often neglected even on European minority politics’ level and on experts’ forums. Traditional or national minority groups got into minority position, as a part of a nation because of external decision of power politics; they are part of a spontaneous mass migration or population movements; or subjects to organized resettlement of people, for instance. They possess dual identity as far as their traditions, culture, history and language differs from the one of the host society, but ideally, they also integrate at some level to the society of the home country.

The collective rights of these minorities should be respected and the identity, language, culture, customs, etc. should be preserved not only because in many cases

<sup>22</sup> Karoline MATHISEN L.: The Impact of the Lisbon Treaty, in particular Article 6 TEU, on Member States’ obligations with respect to the protection of fundamental rights. *Law Working Paper Series, University of Luxembourg*, Paper number 2010-01., 34.

<sup>23</sup> Stefan WOLFF: Ethnic Minorities in Europe: The Basic Facts. <https://pdfs.semanticscholar.org/75b5/06975eb5fb135f1c259641d08f1589784e92.pdf> 1., 3.



these minorities got into minority position without their consent, but also because their language, culture and other features are assets to be protected. As every person, members of minority groups are entitled for basic human rights, such as the rights to identity, defined by international law as an inalienable fundamental right. Besides, recognition of collective rights is indispensable, as far as members of the group are only able to exercise a number of the rights in a group (language, culture, etc.).

On the other hand, migrants or new minorities, according to Gordos, belong to minority because of their own decision, and their integration has to go hand in hand with a commitment to assimilation. Gordos is also on the opinion that in case the members of the group do not take-on integration or assimilation of the given host country, they have the possibility returning to their home countries. These minorities are entitled “only” for basic, individual human rights, including the collective exercise of these rights in some cases.<sup>24</sup> However, this statement has to be complemented with the fact that not every migrant chooses to leave his homeland voluntarily; in many cases they are threatened by or facing war, political unrest, harassment, natural disaster, or other difficulties.

In relation to new and old minorities Toggenburg explains that “new minorities want to prevent their ‘being different’ from becoming a basis for exclusion and discrimination. Old minorities want to actively preserve their “being different” in order to avoid tendencies of assimilation. With other words one could say that the Union is more and more concerned with issues of integration, whereas issues of preservation are left to the discretion of the Member States.”<sup>25</sup> However, as it was highlighted in the previous part of the essay, the EU also supports the preservation and protection of national identity and fights against discrimination of any kind. Based also on Toggenburg’s perspective a definite similarity can be observed between new and old minorities: the best strategy used towards them by the host country is integration; the followed “method” on the EU level as well.

If one examines the minority protection of the EU, the efforts of the European Parliament should be mentioned as well. In the past 2-3 decades members of the European Parliament, or more accurately, several groups dealt with the issue expansively. As an example, the work of *Minority Intergroup* is predominant, that stated its operation in 1983, engaged primarily in the topic of minority languages and cultures. It focuses on politically “soft”, non-controversial subjects rather than the on “harder” political issues. At the beginning of the 1990s the attention of the Intergroup was devoted mainly towards the then new European Charter for Regional or Minority Languages, and it has a crucial role in delivering financial support to lesser-used language communities.<sup>26</sup> In 2004 its name was changed for Intergroup for Traditional National Minorities,

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<sup>24</sup> GORDOS Árpád: Új jogalkotói szándékok az európai térben és az EU-ban a nemzeti kisebbségek védelmére (New Intentions for Legislation in European space and in the EU for the Protection of National Minorities). *Európai Jog*, 2014/6. 6. (author’s own translation).

<sup>25</sup> TOGGENBURG op. cit. 19.

<sup>26</sup> K. GÁL – D. HICKS – K. EPLÉNY (written and ed.): *Traditional Minorities, National Communities and Languages, European Parliament’s Intergroup 2009-2011*. Brussels–Budapest, 2011. 10. <http://www.poliglotti4.eu/docs/Publis/2255.pdf>

Constitutional Regions and Regional Languages under the chairmanship of Csaba Tabajdi and vice-chairmanship of Kinga Gál who made a move into the broader area of minority protection. In 2009 it was reinstated with the name of Traditional Minorities, National Communities and Languages.<sup>27</sup>

Furthermore, many representatives of the *European People's Party* have the aim to develop a functioning minority protection system in the EU as well, trying to achieve respect for minority rights of national minorities and putting an end to discrimination based on nationality and culture. An important achievement of the Bucharest congress of the EPP in 2012 was that the Party has changed the wording of its Manifesto on a way it dedicated a distinct subsection to its aim to protect traditional minorities: "We reaffirm the rights of traditional minorities within the Member States and we protect our European traditions and cultural heritage."<sup>28</sup>

The competence of the *European Union Agency for Fundamental Rights* (FRA) is also an undeniable attainment, and as one of the EU's decentralized agencies it provides the expertise background for the institution and for the member States in order to ensure full respect for fundamental rights across the EU.<sup>29</sup> The organization was established in 2007 and ever since it collects and analyses information and data about respect of fundamental rights in member countries; provides assistance and expertise; communicates and raises rights awareness.<sup>30</sup> The project implementation of the organization is realized by thematic five-year Multi-annual Framework plans. The 2013–2017 plan contains strategic and thematic objectives for that particular period to "help to make fundamental rights a reality for everyone in the European Union". The Agency is not a monitoring or standard setting institution such as the Council of Europe, and it is not empowered to examine individual complaints such as the European Court of Human Rights (ECtHR). It has no regulatory decision-making power.<sup>31</sup> The FRA also has dealt with the discrimination of minorities in the EU in the European Union Minorities and Discrimination Survey (EU-MIDIS). The first EU-MIDIS survey had taken place in 2008-2010, the second started in 2014 being the first EU-wide survey to specifically interview a predominantly random sample of immigrant and ethnic minority groups using a standardized questionnaire (23,500 people from various ethnic minority and immigrant groups were surveyed across the EU's 27 Member States in 2008). The survey's main part asked respondents about their experiences of discrimination on the basis of their immigrant or ethnic minority

<sup>27</sup> Ibid. 11.

<sup>28</sup> European People's Party, Manifesto EPP Statutory Congress, 17–18 October 2012. Bucharest, Romania. <http://www.epp.eu/files/uploads/2015/11/EPP-Manifesto-2012-EN1.pdf>. 6.

<sup>29</sup> According to Council Regulation (EC) N° 168/2007 Art.2 establishing the FRA: "The objective of the Agency shall be to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights." Council Regulation (EC) N° 168/2007 Art.2.

<sup>30</sup> For more information see the official website of the FRA: <http://fra.europa.eu/en/about-fra/what-we-do>

<sup>31</sup> See FRA Strategic Plan 2013-2017, 1.1 FRA's mandate: <http://fra.europa.eu/en/about-fra/what-we-do>

background, their experiences of criminal victimization (including racially motivated crime), and experiences of policing.<sup>32</sup> The concluding remarks of the survey highlighted the problem of discrimination and criminal victimization against ethnic minorities and immigrants in the EU, and provided evidence for reviewing the implementation of existing anti-discrimination legislation and policies, including legislation in the field of racist crime.<sup>33</sup>

These survey results are not astonishing as far as members of minorities, even resulting from their minority position, often feel a sense of vulnerability and discriminatory tendencies from the side of the majority. On the other hand, the majority often refers to the 'surplus of rights' secured for a given minority group. In the following section of the paper this 'special right' character of minority rights will be examined, whether minorities truly are positively discriminated towards the majority in some cases.

### 3. 'Special rights' for minorities in the EU – individual vs. collective rights

Minority representatives of the EU, as mentioned previously, are clearly on the opinion that their rights have to be broadly respected and secured, "special rights" should be guaranteed to them in order to ensure equal opportunities; a kind of positive discriminatory trends, in general. However, in reality these "special rights" often cover the rights being evidently given for the majority: right to use their language, right for education on their mother tongue, right to use their own symbols, preserving their own culture and alike. On the other hand, the mentioned rights secured for minorities seem to be 'special' for the majority.

Another group is formed by the true opponents of minority rights, declaring that national minorities should adjust to conditions of the host state. In this context, rights given to the minority can be seen as 'special' which may seem unfounded in the eyes of the majority. For them it conveys the message that minorities possess 'more' rights than the majority has: beside the rights secured for the majority (and which at the disposal of the minority to some degree as well) they have a 'surplus of rights'.

It has to be emphasized, though, that the problematics of minority rights does not lie in the non-existence of these rights. Minorities possess individual rights such as freedom of association, freedom of speech or religion. The Post-War approach of universal minority protection strengthened these individual rights in the *United Nations Charter (1945)*, in the *International Convention on the Elimination of All Forms of Racial Discrimination (1965)*, or in the *International Covenant on Civil and Political Rights (1966)*. However, as it was mentioned before, in the 1990s the situation has

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<sup>32</sup> EU Agency on Fundamental Rights official website: <http://fra.europa.eu/en/publication/2012/eu-midis-main-results-report>

<sup>33</sup> *EU-MIDIS European Union Minorities and Discrimination Survey, Main Results Report, European Union Agency on Fundamental Rights*. [Publications Office of the European Union] 2010. 268., 270., 272. Accessed via: [http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\\_GB/-/EUR/ViewPublication-Start?PublicationKey=TK3210550](http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=TK3210550)

changed because of the creation of different regulations concerning minorities; and the international community stated to focus on the collective dimension of minority rights.

There is no doubt that in the EU national minority rights have to focus on the collective side of these rights. At this point, some internationally relevant documents were and will be mentioned because of analogy between the international and EU legal system, stating that collective rights in the EU bear the same meaning as on the international level.

International law secures individual rights for the members of minority groups that are guaranteed to each member of a group, and all citizens are entitled to equality of rights regardless of whether they are members of a group that may deserve special rights. However, collective rights derive from group differentiation that sets the minority group apart from the majority group. Realizing collective rights requires applying special measures in order to ensure appropriate protection of the minority group's unique and usually fragile identity and interest. The specific rights guaranteed to the group depend on the nature of the group, but irrespective of the particular rights, they are conferred upon the minority due to its uniqueness as a group<sup>34</sup>. In other words, without respecting and securing collective minority rights, national (and other) minorities belong "only" to the category of other individuals, but are not able to enjoy these rights together with other members of their group. Member States are in the position to adopt special or positive measures in order to secure these minority rights without discriminating against the majority.

The system of individual human rights needs to be integrated by the positive protection of national minorities on an individual as well as collective basis.<sup>35</sup> The *Copenhagen Document of 1990*, signed by the participating States of the Conference on Security and Co-operation in Europe, refers to collective rights quite clearly. Paragraph 32 states that persons belonging to national minorities have the rights to freely express, preserve and develop "their ethnic, cultural, linguistic or religious identity" and to develop their culture in all its aspects. Furthermore, it pronounces that "persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights".<sup>36</sup> Collective rights include not only the fundamental right to official recognition and the right to existence and identity, but other fundamental rights as a consequence of the recognition, such as the right to use one's own language in the public sphere; the right to education in one's native language; the right to establish separate organizations including political parties; the right to maintain contacts with the

<sup>34</sup> Yousef T. JABAREEN: Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples. *U.C. Davis Journal of International Law and Policy*, 119., (Fall 2011) 124–125.

<sup>35</sup> Szekler National Council official website: [http://www.sznt.sic.hu/en/index.php?option=com\\_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24](http://www.sznt.sic.hu/en/index.php?option=com_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24)

<sup>36</sup> Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, see para. 32.

kin-state or persons and institutions who share the same culture; the right to exchange information and mass media in one native language.<sup>37</sup>

Examining collective minority rights, the question of EU's "double standard" mechanism is often criticized by minority experts and different EU member States as well, as it was mentioned above. It refers to the phenomena that the Union uses different approach towards old and new Member States. In connection with new candidate countries, the EU compels them to transpose and implement standards of internal democracy, state administration and detailed regulatory protection that the EU-15 have had a half century to accommodate. It also imposes a double standard in a handful of areas, such as the protection of ethnic minority rights, where candidates are asked to meet standards that the EU-15 have never set for themselves. These standards can be quite difficult for some new member States or candidate countries to follow.<sup>38</sup>

According to Henrard when one focuses on minority specific rights, in the sense of rights granted to persons belonging to minorities, this complaint is correct; there are in EU law no explicit demands on the member states to subscribe to particular minority rights, as they are for example enshrined in the Framework Convention for the Protection of National Minorities. The ECJ has not examine the actions of the EU institutions or the member States in terms of compliance with minority specific rights. Furthermore, several of the traditional member states have not adopted specific legislations and policies to ensure comprehensive minority protection; some because there live no minorities live on their territory.<sup>39</sup> From this perspective, a more nuanced viewpoint is that not all EU member States have or feel the need keeping up with minority rights improvements (and there are instances when the political will is missing), trying to respect human rights (such as right to identity, non-discrimination, right to education, etc.), not paying particular attention to build up definite minority-specific standards.

Consequently, the approaches and views of EU member States differ significantly if dealing with national minorities; following different argumentation. In connection with *Article 27* of the International Covenant on Civil and Political Rights, also supporting the collective side of human rights, it declares that in those states where ethnic, linguistic, religious minorities are present, states have to secure the opportunity for them to enjoy these rights in community with other members of the group<sup>40</sup>. As the EU member States see the minority question differently, there are also two schools of interpretation

<sup>37</sup> [http://www.sznt.sic.hu/en/index.php?option=com\\_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24](http://www.sznt.sic.hu/en/index.php?option=com_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24)

<sup>38</sup> Andrew MORAVCSIK – Milada Anna VACHUDOVA: National Interests, State Power, and EU Enlargement. *Center for European Studies Working Paper*, No. 97., 2003. 7–8.

<sup>39</sup> Kristin HENRARD: 'The EU, Double Standards and Minority Protection': A Double Redefinition and Future Prospects. In: K. HENRARD (ed.): *Double Standards pertaining to Minority Protection: a critical and multi-dimensional re-appraisal*. Leiden, Brill, 2010. 23–24.

<sup>40</sup> International Covenant on Civil and Political Rights, 1966, Article 27, No. 14668.: "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 profess and practice their own religion, or to use their own language."

for this mentioned Article of the Covenant: the minimalist or passive school and the radical or activist school. According to the minimalist school the article cannot be interpreted as affording any collective rights, and states with national minorities are not required to enter any commitment to protect them, beyond avoiding hindrances on the minority group employing their own language and developing their own culture. The mentioned Article provides only a modest protection towards minorities.<sup>41</sup> The radical school is in favor of active and sustained measures, they would like to break with the historic interpretation of minority protection, and give more effectiveness for the rule. According to them, states should support minority activities, protect them, but they also have other obligations towards them which have to be fulfilled.<sup>42</sup>

As it has been mentioned, it is the own decision of every state whether they follow the opinion and practice of minimalist or radical school. The experience shows that the majority of member States is in favor of the minimalist policy-making. Countries supporting minority protection are pushed into the background; general will is missing for implementing measures of minority protection. The nature and characteristics of minorities are very diverse making the situation even more complex. The question arises: what are the opportunities of supportive states of the EU minority protection policy; is there a possibility to reach further achievements within the organization? In the next part of the paper, the obstacles and the possible further prospects of EU minority protection will be shortly examined.

#### **4. Obstacles and possibilities for developing a common EU minority protection policy**

International experiences, but also numerous efforts of some EU member States show the problematic and complex nature of minority protection in the EU; some of these were presented in the paper as well. However, several possibilities are still open in order to strengthen the position of national minorities that have to be exploited on wider basis.

As far as EU institutions have the greatest say in different matters, in this context it is important to examine, whether EU bodies have the power, arising from a definite article or provision of the founding treaties, to secure minority policy guidelines. *Article 352* of the Treaty on the Functioning of the European Union declares that the Council shall adopt appropriate measures in order to provide necessary powers for the political objectives set out in the Treaties.<sup>43</sup> The provision could be theoretically

<sup>41</sup> Emilia PAPOUTSI: Minorities under International Law: How protected they are? *Journal of Social Welfare and Human Rights*, Vol. 2., No. 1., (March 2014) 339.

<sup>42</sup> European People's Party, Manifesto EPP Statutory Congress, 17–18 October 2012. Bucharest, Romania. 6. <http://www.epp.eu/files/uploads/2015/11/EPP-Manifesto-2012-EN1.pdf>

<sup>43</sup> Treaty on the Functioning of the European Union, Article 352 (1), ex Article 308 TEC, Official Journal 115, 09/05/2008 pp. 0196: "If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where

applied in connection with minority protection; however, the necessity of minority protection policy of the EU is a much-debated issue not only among member States, but also among EU institutions neglecting the issue in a large measure. The objectives, such as non-discrimination, freedom, equality, rule of law, etc. are set in EU treaties, as it was already mentioned in the paper (for instance Article 2 of the TEU declares that the right of persons belonging to minorities is a value which has to be respected in the Union. The expression „rights of persons belonging to minorities” occurs in an EU treaty for the first time in the history of the EU. Also, Article 21 and 22 of Charter of Fundamental Rights prohibits discrimination based on different characteristics, such as language, ethnicity and so on). It means that rather vague opportunity for EU minority protection is the expanding legal regulation dealing mainly with non-discrimination and minority rights.

According to Henrard, non-discrimination, social inclusion and protection, integration, human rights and cultural diversity are the most important standards, being in close inter-relationship with each other, helping to promote minority interest and develop their situation in the EU.<sup>44</sup> In other words, protection of national minorities is deducible from the mentioned practices, which serve as a basis or reference point in order to build more respect and recognition for minority rights in the EU.

The previously mentioned objectives can be realized with the adoption of appropriate measure, but the process of drafting and legislation has to be launched with the proposal of the European Commission and European Parliament on a given topic, subsequently accepted by the European Council. Since the question of national minorities is debated and dealt with only among a small number of EP parties and MEPs, the advancement is ponderous.

Vermeersch is on the opinion as well that the scope of minority rights can be very narrow depending on many factors, i.e. the political regime of the state, the specific state formation, the population of the minority group; whereas it can be very broad. As he describes, it could range from the introduction of minority self-governments, the granting of territorial or cultural autonomy to minority groups, the funding of activities and organizations of national minorities to guaranteed representation, or consultation of minorities in government institutions and funding of bilingual education or mother-tongue instruction.<sup>45</sup> Different interests, desires, values, goals stand against each other frequently. The aim of national minorities is sometimes to receive autonomy in the given state, but the examination of autonomy-issue and providing examples would lead us too far, and so it will not be examined in this paper. In addition, the question of autonomy, and governance of autonomous territories would not fall under the possible

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the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.”

<sup>44</sup> HENRARD op. cit. 37.

<sup>45</sup> Fukuyama MEMISOGLU: The European Union’s Minority Rights Policy and Its Impact on the Development of Minority Rights Protection in Greece. *Third Hellenic Observatory PhD Symposium on Contemporary Greece: Structures, Context and Challenges Hellenic Observatory, European Institute, LSE June 14–15, 2007, University of Nottingham, 4.*

regulation of general EU minority protection policy in the sense that autonomous territories have or would have their own decision-making bodies. Furthermore, states are the crucial decision-makers in connection with autonomy question (as well as with the secured rights of their minorities).

The other questionable issue for bringing into effect minority protection in the EU is the actual realization; the “appearance” of minority protection framework. Should the EU take over Council of Europe standards and instruments, or should it create new guidelines? Would it be possible to agree on common rules among member States and achieve that they would handle the issue as a determining and important topic? As, for instance, Toggenburg mentions for efficient mainstreaming, all actors – from the legislator, to the Commission’s various units down to the national civil servant – have to apply a minority perspective which requires adequate sensibility and competence. This is still lacking together with defined scope, procedures and methods of minority policy.<sup>46</sup>

The extension or development of minority rights for national minorities is another debated issue that could lead to dissatisfaction of other, new minorities in Europe. Should the EU handle all minorities together in order to prevent discontent, and in case the answer is positive, what are the guidelines along which it can happen? Not only the rights of national minorities should be defined, such as the right to use their own language under certain conditions, right to education on their mother tongue, supporting their culture and communities, etc., but also the exact measures and goals have to be set creating a proper reference point for the group. As mentioned previously, one of the biggest obstacles is that most proposals by the European Commission or the European Parliament (but also Council of Europe norms) contain blurred wording, allowing different interpretation. (However, in some cases it turns out to be a positive outcome for minorities, referring to specific right that could be inferred from general wording).

Furthermore, assimilation and integration strategies of member States, or of the EU as a whole, are worth to examine. It is not negligible what the primary aim of a given state or institution is in connection with its minority policy: *assimilation* or the *integration*.

To give an example, the number of Hungarian minority living in Slovakia set out in 1990s almost 570.000<sup>47</sup> people; today this number is around 456.000<sup>48</sup>. The missing general minority protection system of the EU cannot be blamed as a one and only reason for assimilation, however in many cases assimilatory tendencies occur because members of the national minority can better prevail in Slovakia in case they choose to learn and use the Slovak language. In this manner, they can receive better jobs or have more extensive study opportunities. Furthermore, by giving up their nationality they can belong to the majority, to the wider community with the feeling of ‘togetherness’.

<sup>46</sup> Gabriel N. TOGGENBURG: A remaining share or a new part? The Union’s role via-a-vis minorities after the enlargement decade. *EUI Working Papers*, 15. (2006) 11.

<sup>47</sup> Mária HOMISINOVÁ: Slovaks living in Hungary and Hungarians living in Slovakia. Empirical analysis on the construction of national identity. *Človek a spoločnosť*, 12/1., (2009) <http://www.saske.sk/cas/zoznam-rocnikov/2009/1/5854/>

<sup>48</sup> <http://www.korkep.sk/cikkek/belfold/2017/06/26/statistikai-hivatal-tavaly-tovabb-csokkent-a-szlovakiai-magyarok-szama>



On the other hand, “integration is a partnership, with the host and migrant cultures (or individuals) meeting sort of in the middle of the bridge, where they take time to understand the journey each one has taken.”<sup>49</sup> Integration needs some sort of respect towards other nationalities, but also understanding and cooperation. Considering the “united in diversity” motto of the European Union, only the integration can serve as a useable strategy helping the realization of minority protection and sustainable neighborly relations.

In this vain, shifting towards the conclusions of the paper, potential instruments helping EU institutions dealing with minority protection should be named; firstly the European Citizens’ Initiative. It was introduced in 2011<sup>50</sup> with the aim to bring EU decision-making “closer” to EU citizens, so they could participate in the process. The initiative is basically an invitation to the European Commission to propose legislation on matters where the EU has competence to legislate. A citizens’ initiative has to be supported by at least one million EU citizens, coming from at least 7 out of the 28 member states. A minimum number of signatories is required in each of those 7 member states.<sup>51</sup>

Recently, an important initiative is open for signature in order to improve the protection of national and linguistic minorities in the EU. The Federal Union of European Minorities (FUEN) submitted the “*MinoritySafePack – one million signatures for diversity in Europe*” initiative to the European Commission in July 2013 in connection with minority protection, and it was taken before the European Court of Justice, after the European Commission rejected the initiative in September 2013. This initial decision of the Commission from 2013 to deny registration of the initiative was annulled by the General Court of the European Union in the beginning of February this year.<sup>52</sup> It meant that the FUEN could start collecting signatures from April 2017 in the EU, what citizens can sign until April 2018 (electronically and on paper). EU countries having considerable number of their nationals living in another EU member State hope the success of the Minority Safepack, as far as it serves as a great opportunity calling the attention to the issue of national minorities. However, in case the initiative will not reach one million supporters, it would convey a negative message questioning the importance of the issue in the eyes of EU decision-makers. Currently, according to the online signatures of the initiative only in Romania and Hungary have reached the signatures the defined threshold<sup>53</sup>, paper-based results cannot be evaluated at this point, though. Based on own experiences, but also on inquiries from others, it seems that the initiative was not promoted expansively in EU member States (probably except of Romania), not even in those where a considerable amount of minorities are present.

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<sup>49</sup> Joanne APPLETON: Assimilation or integration: migrants in Europe. *Encounters Mission Journal*, Issue 36, (2011) 2.

<sup>50</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative.

<sup>51</sup> Official website of the European Commission: <http://ec.europa.eu/citizens-initiative/public/basic-facts>

<sup>52</sup> FUEN official website: <https://www.fuen.org/key-topics/european-citizens-initiative/>

<sup>53</sup> Official website of the initiative: <https://ec.europa.eu/citizens-initiative/32/public/#/>

Besides, only the future will tell the fate of the Minority Safepack that is, in overall, a great opportunity minorities and EU member States should take advantage of.

The other, several times referred instrument is the Open Method of Coordination (OMC). The OMC is an EU policy-making process or regulatory instrument initiated by the Lisbon strategy in 2000. It belongs to 'soft-law' forms, as it can be realized on intergovernmental level not resulting in binding EU legislation. It means EU countries do not have to amend their laws or introduce new ones. It gives the possibility of cooperation among several Member States, for those who are ready to form partnerships concerning topics affecting them (such as employment, social protection, education, youth and vocational training). National policies can thus be directed towards certain common objectives. Under this intergovernmental method, the EU countries are evaluated by one another, with the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.<sup>54</sup> In the case of minority issues, as it does not concern all EU member States, the OMC would serve as a possible solution for a group of countries defining minority objectives and establishing measuring instruments.

A weakness of the OMC is often seen in the lack of effect sanctions, either through private enforcement (direct effect) or public enforcement (Commission/Member State intervention and litigation). Yet the role of the OMC should not be underestimated. The recent use of the OMC processes could be seen in areas where the Member States have guarded their competence, where there are still considerable differences between the Member States, or in areas a weak compromise has been achieved. The OMC is a subtle penetration into areas of competence outside of Community competence.<sup>55</sup>

These are only two, probably the most well-known, examples to be followed by the EU national minorities in order to speak out on the respect of their rights. It is not the aim of the paper to deal with other ways of minority progress, for instance with different forms of autonomy that is great opportunity as a matter of course.

In general, international minority standards, emerging from the 1990s, gave possibilities for minorities to strengthen their presence at the international scene. However, these possibilities remained at the level of informal diplomacy, and did not institutionalize on a way that would secure a representative forum for minorities on international level. According to Vizi, minorities are rather subjects than objects of international law regulations. For national, linguistic minorities the nation-state structure will be determining in the future as well, national sovereignty in most cases will not be reshaped.<sup>56</sup> However, this is indeed the case, there are several opportunities in the hands of national minorities that could be used wisely and developed further,

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<sup>54</sup> For more information see the EP's official website: <http://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>

<sup>55</sup> Erika SZYSZCZAK: Experimental Governance: The Open Method of Coordination. *European Law Journal*, Vol. 12, No. 4, July 2006. 500.

<sup>56</sup> VIZI, Balázs: Kisebbségek politikai szerepe és a nemzetközi szervezetek Európában. (The political role of minorities and international organizations in Europe.) Conference material at Thucydides vs. Kant In Our Time: Reconsidering The Concepts of War and Peace (4 December 2014), written version prepared by: *OTKA* Nr. K105432 research, 140–141.

continuously calling the attention of EU bodies and member States to the neglected situation of national minorities, and hoping that this step by step approach brings more notable results in the future.

## 5. Conclusion

In connection with minority protection of the EU positive development trends occurred in the past years, for instance the mentioned accomplishments of the treaties paying more attention to non-discrimination of minorities and other groups as well. However, as the topic is a delicate issue, it is managed only considerably; mostly over-generalized rules or guidelines are presented.

When talking about the respect of minority rights in the EU framework, other organizations, mainly the Council of Europe is often involved in the examination, as far as it deals with minority issues more intensively. In many cases there are possibilities offered to the Union to follow or take over some documents and recommendations of Council of Europe, based for instance on the European Charter for Regional and Minority Languages and on the Framework Convention for the Protection of National Minorities.

However, concerning the Council of Europe, and more accurately the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) signed in Rome in 1950 by the CoE member States, the European Commission requested the Court of Justice of the European Union for an opinion whether the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms is compatible with the Treaties or not. According to the opinion of the Court<sup>57</sup> *this agreement on the accession is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.*"

The principles of ECHR were not formally incorporated into the legal order of the EU; otherwise, like any other Contracting Party, the EU would be subject to external control mechanisms provided for by the ECHR to ensure the observance of the rights and freedoms and to the decisions and the judgments of the European Court of Human Rights.<sup>58</sup>

It means that the EU could take over different settings and approaches from the Council of Europe, but it is legally not influencing the decisions or the EU primary law because it would be contradictory to the Treaties. As far as the connections between the two organizations are not defined, CoE can serve only as an example and a proper reference point calling the attention of EU members to its minority protection instruments.

One could also ask whether it is worth to deal with the protection of national minorities in the EU. The European Union, grounded as an economic alliance, is more

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<sup>57</sup> Opinion 2/13 of the Court (Full Court) 18 December 2014 pursuant to Article 218(11) TFEU.

<sup>58</sup> *Ibid.*, see section 179 and 181.

devoted nowadays to economic and political matters than minority right issues. It cannot refuse its goals and aims, its character; however, the institution as a whole has to realize that new problems occur awaiting a solution. Dealing with minority issues, organizing hearings, drawing minority proposals and proceeding with 'soft measures' from the side of national minorities; it all conveys important political message for EU bodies and for member States as well.

It is likely that at first, only few Member States would accept some of the minority proposals, but there is a possibility for other countries to join later if political or other relations will change. Moreover, for member States who are interested in minority protection these regulations would bring new developments into their action towards minorities.<sup>59</sup>

Only the future can tell whether EU decision-makers and representatives of different national minorities will be enduring enough to initiate appropriate solutions. The cooperative attitude of the EU with above mentioned international organizations, recommendations, practices and rules will be also decisive. In any way so ever, the issue cannot be neglected if the Union wants to secure prosperous relations on its territory.

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<sup>59</sup> CZIKA op. cit. 116.