

EU Minority Protection Policy: Cultural Rights of Traditional Minorities

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Introduction

Traditional/autochthonous minorities. Under the term we mean communities which became minorities as a result of an external decision of power-politics. In many cases these minorities have kin-states in the EU, and form part of the state where they live. Besides their basic human rights their collective rights, identity, language, culture, customs have to be respected and preserved.

The regulations and soft-law measures create a good starting point in dealing with national minority protection, but the question remains whether it is possible and necessary, or whether it is needed, to regulate the situation of traditional minorities. The paper deals with the present stand of national minority protection, and with the „framework” in which traditional minority is understood: it is mainly characterized by cultural rights and identity. This is the reason why in considerable part of the paper the meaning of cultural rights will be analysed. In the last part of the essay the question will be posed how minority protection could be realized, what the possibilities are in order to deal with minority questions more properly.

The general framework of minority rights in Europe in the 1990s

After the fall of communism in Central Eastern Europe minorities found themselves in a better situation in a sense that they started to claim “more” rights in their home states. The dissolution of countries where many minority groups lived already (Yugoslavia, Czechoslovakia, the Soviet Union) had the result that these minorities started to claim “more” rights from states where they lived. It was not an ineffectual endeavour because this was the decade when a lot of recommendations and treaties on minority rights came about.

The biggest problem was that only a negligible part of these regulations were legally binding, and even these documents contained mostly vague wording and lines of conduct in connection with national minority groups.

The problem of interpretation and the unwillingness of states were (and are) the biggest obstacles to deal with the topic effectively. In the absence of enforcement measures states interpret the mentioned documents diversely, and decide on minority topics rather discretionally.

However, it has to be mentioned that starting mainly with the *French Revolution* in 1789 European states were built on the nationality principle, in other words nation

was the main principle on which state were built. The unity of the nation meant the unity of language and culture. This pattern was followed after the end of the First World War when new states came into being. It was realized, though, that more and more minority communities evolved in Europe, and that pattern will continue in the future as well.¹

After the Paris Peace Conference new states with sizeable minority populations emerged. For this reason, many minority treaties were made between European states in the framework of the *League of Nations*, but these treaties were neglected because only some states were subjected to them and kin-state had claims for territorial revision as well. After the Second World War these disregarded minority rights were replaced by the recognition of basic human rights, therefore minority rights were not particularly dealt with until the end of the *Cold War* era.²

In the period of League of Nations the issue of international security came forward, and after that modern European institutions also hoped that by protecting minority rights they can protect international peace. For instance, the Council of Europe Framework Convention also declares that the protection of minority rights is of crucial importance in every little detail in connection with conflict prevention, in order to reach stability, democratic security, and the promotion of cultural diversity enriching each society.³

However, it was clear that in the League of Nations system the Allied governments did not want to create 'States within States' by granting national groups political autonomy. This was the reason they referred to "members of minorities" and not simply "minorities".⁴

From 1945 to 1989 states thought that the universalization of minority protection threatened their internal political, economic and social stability and their prosperity, so they focused on reaching national unity through integration policies. Minority protection was confined to the realm of non-discrimination and of individual human rights. States and the international community rejected the notion of cultural rights.⁵

As it was mentioned before, after the 1990s the minority question came into view, and many instruments came into being. The lack of a universally accepted definition of the term "minority" had and still has advantages as well as drawbacks if one considers it from the point of view of national minorities. Differing characteristics of national minorities make it almost impossible to find a common definition for them,

1 VIZI Balázs: Protection without definition – notes on the concept of "minority rights" in Europe. *Minority Research*, 15., 2013/1., 7. Source: http://bgazrt.hu/_dbfiles/blog_files/7/0000004037/Balazs%20Vizi%20-%20Protection%20without%20definition.pdf (08. 06. 2016.)

2 *Ibid.*, p. 8.

3 Miriam, J., AUKERMAN: Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context. *Human Rights Quarterly*, 22., Nov. 2000, p. 1044. See also Framework Convention, supra note 6, at pmb1. and Explanatory memorandum, supra note 51, para. 5.

4 Ana Filipa, VRDOLJAK: Minorities, Cultural Rights and the Protection of Intangible Cultural Heritage. *European Society for International Law, Research Forum on International Law Contemporary Issues*, 2005, p. 3.

5 *Ibid.*, p. 3.

but it is a good question to pose whether a definition is needed to deal with the issue effectively in the EU.

Large number of “soft law” measures (plans, recommendations, etc.) introduced in the 1990s help in securing some guidelines in connection with national minorities, and also set some goals which should be achieved in the near future.

On the other hand, in the Council of Europe and United Nations framework the *European Charter for Regional or Minority Languages* (1992, CoE), the *Framework Convention for Protection of National Minorities* (1995, CoE) and the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) contain some promising regulations concerning traditional minorities, and in the EU law the *Treaty on the European Union* and the *EU Charter of Fundamental Rights* mention the importance of non-discrimination based on ethnicity and nationality, and also the respect for minority rights.

One can say that these documents do not represent a breakthrough in the history of minority protection, but according to some experts it was due to preventative enforcement in the 1990s that most national minority-majority conflicts did not escalate into violent conflicts, mainly between 1990 and 1995. However, the OSCE and COE could adopt only those enforcement measures that were agreed upon by their member countries. International society continued to consist of sovereign states, therefore human and minority rights were mainly jeopardized.⁶

Human rights norms has become fully internationalized, but the international system consists of states, which means that the implementation and the enforcement is almost completely in the hands of national authorities. This also applies to the international protection of minority rights, countries can decide on implementation of these rights, they have a wide range of choice in determining their minority policies. Usually states cannot provide an identity neutral environment for their citizens in order to exercise their civil and political rights. States and international organizations can hardly define identity-specific rights, since shared sovereignty, multi-level governance or autonomy is not specifically defined in international documents.⁷

Analysing the mentioned documents and guidelines is not the aim of the paper because there are many other studies dealing with the question on a legal or political basis.

At the same time it has to be mentioned that in the EU framework, according to some experts, the Treaty of Lisbon impacts minority rights and emphasizes the rights of persons belonging to minorities and diversity in general. Previously in the treaties there were many legal bases emphasized in connection with minorities, for instance provisions on free movement, education, culture, regional development, minority cultures and languages had to be taken into account. However, before the

6 Jennifer, JACKSON PREECE: National Minority Rights Enforcement in Europe: a Difficult Balancing Act. *The International Journal of Peace Studies*, 3., 1998/2., pp. 12–13. Source: www.gmu.edu/programs/icar/ijps/vol3_2/Preece.htm (26. 09. 2016.)

7 VIZI: *op.cit.*, pp. 19–20.

Lisbon Treaty the EU minority protection was equivalent to an EU migration policy. Non-discriminatory frameworks did not provide much protection for minorities within their own state, and the existing measures were not effectively implemented.⁸

The post-2009 EU legal framework develops the area of minority questions in certain ways. There is an increase in provisions and case law which can be used in the minority rights context and the legal and policy direction concerning the protection of minority rights within regions is also developing. However, post-Lisbon developments and the EU's protection of minority rights extend only insofar as these rights and groups are already supported at a domestic level. It means that any benefit to minorities arising from these provisions is dependent on the national level, so new developments do not create new minority rights, but only safeguard the existing legal and political sovereignty of Member States.⁹

A common feature to all instruments is that their standards are unclear and they neglect positive measures. None of the treaties and conventions have any sort of sanctions for non-compliance. The Council of Europe conventions only establish monitoring mechanisms, the UN and the OSCE conventions are silent about monitoring mechanisms. In the EU there is a lack of legislation; even though they always call for the respect of minority rights on the international scene. This can be considered as a double-standard: the EU is instructing others to respect minority rights, but the organization itself does not guarantee special rights for its minorities.¹⁰

It is often argued that the institution has more important problems or areas to deal with and to solve than the rights of national minorities, and it is a valid observation. On the other hand, time will never be just right to build up a minority protection system, and the majority of member states will be probably against the whole idea of a new level of minority protection.

In addition, it is also problematic who the initiators, the forerunners of minority protection system in the EU will be, and how they could influence “big power politics” and win the “players”?

As minority rights are often equated to cultural rights, it is important to get a closer look at these rights as well, examine the real content and meaning of cultural rights. In the following, main part of the paper this subject-matter will be analysed from a wider perspective.

8 Tawhida, AHMED: The Treaty of Lisbon and Beyond: The Evolution of EU Minority Protection? *European Law Review*, 2013/1., pp. 32–33.

9 *Ibid.*, pp. 48–50.

10 PÁL Norbert: *Self-determination and minority rights – a dead end for national minorities in post-communist European states to preserve their cultural identity. Is there hope?* Leiden University, LLM Public International Law, 2012, pp. 19–20. Source: www.academia.edu/2215635/Self-determination_and_minority_rights_-_a_dead_end_for_national_minorities_in_post-communist_European_states_to_preserve_their_cultural_identity_Is_there_hope (27. 09. 2016.)

Minority rights = cultural rights?

Minority rights are often defined as cultural rights, or in other words minority communities are seen as cultural communities. It is a partially valid statement, however, an ethnic or minority community has many other characteristics and determining factors.

Often the issue of culture and cultural rights is transferred to the sphere of politics. In societies where many nations live together the existence of a majority and a minority society is either assumed or outright emphasized, and collective cultural rights become national minority rights. Later, the expression of these collective cultural rights can determine the relationship between the majority and the minority, becoming a source of possible latent problems and of conflict interests.¹¹

A minority cultural community can be defined by the following components:

- *the objective component of common heritage and language,*
- *the subjective component of self-identification with the group.*¹²

In case of cultural autonomy, which should be in some cases secured for national minorities, it provides minorities with increased control over issues concerning them. It is limited compared to territorial autonomy and it allows minorities to live their culture through non-territorial structures, such as different associations, irrespective of where these minorities in a given country reside, it is advantageous for minorities dispersed throughout the whole territory of the country.¹³

Culture, similarly to minority, does not have a generally accepted definition, and anthropologists have collected more than 160 different definitions of culture. However, there are widely accepted definitions and some of them will be provided in the followings:

“culture is not a ‘thing,’ a substance with physical reality of its own, but rather made by people interacting, and at the same time determining further action,”¹⁴

“culture is a set of shared and enduring meanings, values and beliefs that characterize national, ethnic, or other groups and orient their behaviour,”¹⁵

culture is therefore something shared by (almost) all members of a social groups, something one tries to pass on, which shapes (through morals, laws, customs) behaviour, or structures, one’s perception of the world.¹⁶

11 FELFÖLDI Enikő: *Minority Rights, Cultural Identity of Minorities, and Cultural Rights in International Law*. Minorities Research 5/Kisebbségkutatás 2. Source: www.hhrf.org/kisebbssegkutasas/mr_05/cikk.php?id=1207 (09. 06. 2016.)

12 FELFÖLDI Enikő: *The Characteristics of Cultural Minority Rights in International Law: With Special Reference to the Hungarian Status Law. The Hungarian Status Law: Nation Building and/or Minority Protection* Ed. KÁNTOR Zoltán et. al. 2004, p. 435.

13 PÁL: *op.cit.*, p. 28.

14 Referred by: Dr. Christine, LEITNER: *Walking the Tightrope – Cultural Diversity in the Context of European Integration. Eipascope*, 2000/1, p. 20. Originally in: Fons, TROMPENAARS – Charles, HAMPDEN-TURNER: *Riding the Waves of Culture. Understanding Cultural Diversity in Business*. Nicholas Bearley Publishing, London, 1997.

15 *Ibid.*

16 Referred by: LEITNER: *op.cit.*, p. 20. Originally in: J. Nancy, ADLER: *International Dimension of Organizational Behavior*. South Western College Publishing, Cincinnati, 1997.

As it can be seen culture means mainly values and beliefs, but also behaviour and action according to these beliefs. In the EU, where many cultures coexist trying to act in conformity with their beliefs and own values, it is not surprising that many problems arise, also making it hard to develop a general framework for minority/cultural rights.

In the EU it is up to the Member States to deal with the cultural rights of minorities, and countries handle the question differently. This also occurs because the Union does not define exact measures or lines which should be followed by member countries. For instance, Article 151 of the EC Treaty declares that “the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity” and that “the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures”.¹⁷

Also, Article 6 (3) of the Amsterdam Treaty says that “the Union shall respect the national identities of its Member States”.¹⁸

As it was mentioned previously the real meaning of these lines, the explanation is clearly missing and the interpretation is left to the states or different parties. The generalized framing is more favourable for Member States who can find many loopholes in order to neglect the rights of national minorities.

The *right to identity* is clearly connected to cultural and minority rights and it can usually be perceived as the right to exercise a freedom on a continuous basis. Identity is developed and preserved through culture, and in multinational countries, collective identity is generally a function of the minority-majority relationship, therefore cultural rights become ethnic, minority rights.¹⁹ If one considers that everyone has the rights to identity, and for some people belonging to a minority is part of their identity, the neglect of these rights should not be allowed.

“For national minorities the respect for their rights is important not only by reason of their identity. There are two other common causes why national minorities need special rights. First, these are necessary to enable national minorities to realize permanent, substantive equality. Secondly, they are necessary in order to maintain cultural membership and identity, and it influences all decisions made by national minorities.”²⁰

It is problematic that cultural rights, in the absence of any codifying treaty or declaration, can be interpreted diversely, and the scope of these rights depends mainly

17 Treaty establishing the European Community (Amsterdam consolidated version). *Official Journal*, C 340, 10/11/1997 P. 0245, Article 151 (1) and (4).

18 Treaty of Amsterdam. *Official Journal of the European Communities*, C 340, 10 November 1997, Article 6 (3).

19 FELFÖLDI: The Characteristics... *op.cit.*, p. 433.

20 Kisten, PORTER: The Realisation of National Minority Rights. *Macquarie Law Journal*, 3(2003), p. 56.

on the understanding of the term “culture”.²¹ The interpretation of cultural rights has a rather narrow projection, i.e. it means mainly the participation in cultural life, preservation of culture for minorities, the recognition of the rights to different cultural identities. The question is what these words mean in reality. It depends in large, as mentioned earlier, on states and on the political elite. There are many obstacles because of which the implementation of minority policy is problematic.

Dr. Leitner addresses the issue of cultural barriers as well as mentioning that cultural differences affect many areas at a European level such as several policy areas, decision-making processes, the quality of policy implementation, negotiations, communications, the sharing of information, and the relationship with citizen. She also adds that it would be interesting to examine how these cultural differences are reflected in the structure of the EU institutions and their interaction with the Members States and whether they influence the speed of integration or not.²²

“A very significant step forward would be the elucidation of various terms and concepts used by the standard-setting instruments, for instance, regarding the still undefined term cultural identity. At the national level, states could introduce relevant positions in their legislation and constitution.”²³ Also, in democratic and pluralist societies, ethnic and other minorities not only have the right to express their own identity but they are *discriminated positively*.²⁴ The practice shows that this happens quite rarely, in many cases it is difficult to put into practice positive discriminatory measures. In EU Member States there are different policies followed towards traditional minorities which are basically set by the government of the given country. In other words, there are distinct levels and factors of realization of minority policies.

In Central and Eastern Europe the concept of minority rights is a bit different than in other parts of Europe. It has mainly due to historical reasons that minority rights are emphasized by minority groups more frequently; however these issues are often neglected by the political elite. These Central and Eastern European approaches to minority rights also markedly differ from the Anglo-American non-discrimination and individual rights formulas, which fundamentally shaped the international human rights framework in the post-WW II era. It can be said that these Central European ideas of minority protection are similar to the protection of indigenous peoples. Like indigenous peoples, Central and Eastern European minorities claim the right to self-determination and the preservation of their distinctive cultures.²⁵

21 Symonides, JANUSZ: Cultural rights: A neglected category of human rights. *International Social Science Journal*, 158(1998), p. 560.

22 LEITNER: *op. cit.*, p. 21.

23 JANUSZ: *op. cit.*, p. 570.

24 FELFÖLDI: *Minority Rights...*, *op. cit.*, p. 3.

25 AUKERMAN, *op. cit.*, pp. 1022–1023.

A big problem connected to minority rights in Central-Eastern Europe is that addressing minority rights happened and happens largely at governmental and inter-governmental level, and minority groups, in most cases, could not participate in the discussions about standards and structures aimed at protecting them. It means that regional documents related to minorities reflect mainly the concerns of states, and not those of minorities themselves.²⁶

If one considers the other side of the coin, and tries to understand the whole process from a sociological perspective, belonging to a minority group depends mainly on the *choice of a person*. The question of *assimilation* and *integration* comes into picture: in case of traditional or national minorities members of the group can assimilate into the majority society in a sense that they begin to use majority language, attend majority schools, and so on. There is the possibility to integrate into the majority society, which means they “cooperate” with the majority society, while also trying to maintain their own language, culture, customs, and so on.

The disadvantages of the assimilation process can be threefold, or have three sources: historic oppression that still affects the opportunities of members of the group, intentional or unintentional discrimination in economic markets and in civil society against groups whose members differ from the rest of the majority, and state support for a dominant majority culture while minorities have to maintain their culture through private efforts. The purpose of public recognition would be the creation of equal citizenship for minority members, so they would not be forced to assimilate into the majority culture.²⁷

As cultural rights cannot be easily enforced, mainly because they belong to the *second generation of human rights* (just like economic and social rights), the intervention and active attitude of the state is required so that these rights could prevail. As the aim of cultural rights is to protect the given community, the state has to set rules in order to realize this protection. However, it is very rare that a constitution or other instruments or provisions regard these rights, but different laws can be adopted by the state. It is difficult that states not only have to be active in legislation connected to cultural rights (also can be said: minority rights), but they have to safeguard them which can be very expensive. It follows from all this that these rights are realized continuously and gradually, the state only “make efforts” and “seeks” to ensure them, and very often states only want to achieve or maintain the minimum level of commitment in connection with their domestically or internationally set standards. Since second-generation rights are only indirectly interpreted in judicial applications, for instance political rights are interpreted in the light of economic or cultural rights; these can be often ignored and are rather relative.²⁸

26 AUKERMAN, *Ibid.*, p. 1025.

27 Rainer, BAUBÖCK: *Territorial or cultural autonomy for national minorities?* IWE – Working Paper Series, 22 (December 2001), 3. Source: <https://eif.univie.ac.at/downloads/workingpapers/IWE-Papers/WP22.pdf> (27. 09. 2016).

28 FELFÖLDI: *Minority Rights... op. cit.*, pp. 5–6.

However, as Will Kymlicka explains “the idea of responding to cultural differences with benign neglect makes no sense. The state unavoidably promotes certain cultural identities, and thereby disadvantages others. Group-differentiated rights – such as territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights – can help rectify this disadvantage, by alleviating the vulnerability of minority cultures to majority decisions. These external protections ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority.”²⁹

It is evident that minority groups refer to their uniqueness and their differing situation in contrast to the majority. According to members of minority groups they are in a disadvantageous situation, and protective measures and different rights can facilitate their equal situation to majority.

Central-Eastern European minorities, and indigenous peoples as well, have used the concept of “equality in difference” to justify their group-differentiated rights. Also, these minorities justify measures to protect their societies based on the distinctiveness of their cultures as a value in and of itself. The equality justification, which focuses on the need to treat people differently in order to treat them equally, and the cultural diversity justification, which emphasizes the intrinsic value of cultural difference, is the same for indigenous peoples and for Central European minorities as well.³⁰ In reality, the “equality in difference” is not an option for national minorities, as positive discrimination measures have to be waited for as well. Presently, minority groups face negative discrimination more rarely than positive, and states` behaviour have damageable effects on these groups.

Policies of national cultural development often imply a policy of genocide which means that cultural groups suffer destruction. For instance, letting a minority language die out can be seen as a linguistic genocide which has four stages: attempting to kill a language, letting a language die out, unsupported co-existence, partial support for specific language functions.³¹

On the other hand, cultural autonomy could initiate inequalities of resources between national groups. Each community has to finance its own cultural institutions; therefore economically weak groups will be unable to afford a good education system, for instance. It means that for them cultural autonomy or enjoying cultural rights is insufficient to stop the trend of assimilation into the majority which is economically more prosperous (these characteristics are also true for territorial autonomy).³²

It means that in case these groups do not assimilate, and cultural autonomy is not reached in the given country they become completely subordinated to the majority` s rule and decisions.

29 Referred by AUKERMAN: *op. cit.*, pp. 1028–1029. Originally in: Will KYMLICKA: *Multicultural Citizenship. A Liberal Theory of Minority Rights* 46, 1995.

30 AUKERMAN, *op. cit.*, pp. 1037–1038.

31 FELFÖLDI: *op. cit.*, p. 434.

32 BAUBÖCK: *op. cit.*, p. 13.

In other words, an important foundation of democracy is missing in the EU. If democracy means the rule of the majority, then we have to ask: why should a member of a minority group accept the majority's decision as legitimate? They can only do so, if they trust that the majority is benevolent towards the minority, and cares about the collectivity as a whole. True democracy can exist if 'thick' collective identity - resting on the existence of a civil society, on shared experiences and expectations, on ongoing process of public communication - exists. But while a critical public system of communication exist on the level of European nation states, it does exist not on the level of the EU as a whole.³³

The problem is that the only parties wanting to implement the minority rights standards in a given member state are the minority parties, but they are often outvoted by the majority in national parliaments, and so their efforts to adopt legislations for national minorities are also failing. The majority complies with the Framework Convention, for instance, or with other international standards because effective monitoring mechanisms are clearly missing, and it makes this compliance easy without taking any further steps.³⁴

European standards could resolve the question and conflicts connected to minority rights with addressing claims for positive minority rights. The formulation "*right to enjoy one's own culture*" is too weak in order to address the issues underlying ethnolnational conflicts and to solve the problem of national minorities. On the other hand, "*internal self-determination*" is too strong to be accepted by many countries.³⁵ The possible solution should be found halfway between the two extremes and in the next part of the paper some possibilities will be mentioned which could be accepted by the majority and minority as well.

However, as it stands nowadays, states are quite far from adopting positive discriminatory measures towards minorities. It is also true, though, that they could reconcile the individual and the collective side of human rights, and harmonize the principle of equality of citizens with the right to diversity.³⁶ Conflicts and differing interests between majorities and minorities make reconciliation and harmonization in most cases almost impossible, and the "world of politics" also significantly affects these attempts. As the minority question is a very sensitive issue, not only in Europe or in the EU, but globally as well, a *modus vivendi* should be found between the concerned parties.

33 Andreas BUSCH: *The Problems of Representing Diversity. Whose Europe? National Models and the Constitution of the European Union*. Eds. Kalyso NICOLAIDIS, Stephen WEATHERILL, -Papers of a Multi-Disciplinary Conference held in Oxford in April 2003, 121.

34 PÁL: *op.cit.*, 25.

35 Will KYMLICKA: *A European Experiment In Protecting Cultural Rights*. Human Rights Dialogue: "Cultural Rights"(Spring 2005) - Carnegie Council for Ethics in International Affairs, 2016, 4.

36 FELFÖLDI: *op.cit.*, p. 12.

Some possibilities for national minorities

Many experts or thinkers, but also minority representatives try to find the possible solution in order to put national minorities at a better situation in EU Member States, or offer some solution which could be acceptable for the majority and minority as well. The complexity of the minority situation, but also getting the acceptance of European decision-makers in order to put the question to EU agenda is very difficult and also unrealistic at this point. The non-existing minority protection policy of the EU basically shows, among other things, how complicated it is to deal with the topic.

In this section of the paper a possible solution will be presented which according to some experts could be a proper way in handling the topic of minorities in majority-minority relations.

As it was mentioned by some professionals the *European Citizens' Initiative* and the *Open Method of Coordination* would serve as a good starting point in order to deal with minority issues. The Citizens' Initiative is a proposal for the European Commission to pass legislations on certain matters (for instance, minority issues). The initiative has to come from one million EU citizens and at least from seven Member States.

The Open Method of Coordination makes the cooperation among several Member States possible that would like to form partnerships concerning topics affecting them. These Member States can amend their laws based on their goals on the given policy area, but the OMC does not result in binding legislation because it only affects the cooperating States. In minority questions, as it does not concern all members of the EU, the OMC would be a very adequate solution, and also the most probable way for realization.

Besides these possibilities which were analysed by others as well, one way of handling minorities and minority rights would be *national-cultural autonomy*. If one considers the realization of this form of autonomy, it is necessary to reconcile the fear of the nation state of losing its territorial integrity with a nation state system that recognizes territorial control as the basis of legitimacy. Without the support of the nation state it is very difficult for national minorities to protect and promote their rights, they lack the resources to implement programs.³⁷ It is hard to solve the problem based on equality, which would mean the nation state secures rights or even cultural or territorial autonomy for a minority group and the minority group uses it with respect towards the nation state. This would be an ideal, but unlikely situation.

Secondly, the *consociational power-sharing* arrangements have to be mentioned. According to some experts, consociationalism would be a possible solution in interethnic power relations in accession countries (but also in EU Member States).

Arend Lijphart sees consociationalism as a *model of democracy* and government in societies with ethnic, religious or cultural cleavages. It is characterized by a grand

37 PORTER: *op. cit.*, pp. 61. and 65.

coalition of the political leaders of all significant segments of a pluralistic society, veto rights of all partners, a high degree of autonomy for each segment, proportionality in political participation, civil service appointments and allocation of public funds.³⁸ The representation of minorities through political parties is probably the most obvious achievement of consociational power-sharing. Interethnic cooperation exists to some extent realizes in many EU Member States, and the EU also tries to promote cooperation in minority-majority relations on a domestic level.

Consociational power-sharing has been criticized for being ineffective in preventing conflicts. On the other hand, it is also true that it can work well together with institutions facilitating cross-ethnic alignment, and consociational strategies are often linked to such institutions, mainly in Central and Eastern European countries.³⁹

As it was mentioned previously, consociational power sharing is also based on mutual respect, reliance and cooperation between the majority and the minority. It presumes good relations among parties, without which consociational power sharing cannot be realized. However, in most countries this friendly relationship is clearly missing.

Also, in case of cultural autonomy, it can hardly be combined with the representation of minorities in federal governments because the two types of governments are not similar. It is generally not impossible to give non-territorial communities a share in the territorial government of a state, consociationalism achieves this. In spite of this, it is difficult to combine forms of non-territorial autonomy with representation in territorial federal government.⁴⁰

Will Kymlicka argued that nation-building activities of ethnic minorities have to be accepted, and states may restrict these efforts only by ensuring individual liberties. According to him *territorial autonomy* is a possible and legitimate arrangement to protect a national minority. He also referred to Central and Eastern Europe in this context, mentioning that territorial autonomy has functioned well in the West, so it has to be considered in Eastern and Central Europe as well.⁴¹ At the same time it also has to be mentioned that in Central and Eastern Europe the situation and the history of national minorities is very different from other parts of the world. Historical and political reasons make the issue more delicate, and the differing characteristics of minorities put the supporters of national minorities into a complicated situation.

Since in most cases national/traditional minorities do not seek independent statehood; their goal is to have political representation and institutions that guarantee the continued reproduction of the community. In some sense it is analogue to *substate nationalism*, which pertains to groups that view themselves as rightful owners of a

38 Martin BRUSIS: The European Union and Interethnic Power-sharing Arrangements in Accession Countries. *Journal on Ethnopolitics and Minority Issues in Europe*, 14(2015)/4., pp. 65–66.

39 *Ibid.*, p. 74.

40 BAUBÖCK: *op. cit.*, p. 25.

41 BRUSIS: *op. cit.*, p. 73.

homeland, but that have no state to call their own.⁴² Although, national minorities have home countries in most cases, they live in other (mainly neighbouring) states as a result of their own decision or different circumstances.

Beside substate nationalism *transsovereign nationalism* can also be mentioned which applies to nations that reach beyond current state boundaries, but they renounce the idea of border changes. For instance, in case of Hungary the post-communist Hungarian government has designed pluralist minority policies domestically and pursued a non-traditional national project for Hungarians beyond the borders. This is related to substate nationalism, but it is coordinated by the national centre which is also the political centre of the state.⁴³

Transsovereign nationalism can cause problems and animosities between the kin-state and the state of residence of the minorities. It is always a delicate issue: if the kin-state supports its minorities from outside, it can be interpreted as intervention into domestic affairs, which makes the relations between two countries worse.

Homeland community also represents the situation of national minorities. These communities consider the place where they have a lengthy history to be their homeland, they usually have a historiography, geography, and literature that tell the story of the link between the community and the territory, and they seek some form of self-government in that homeland. Many times, the same territory is considered a homeland by more than one community.⁴⁴

The “rise” of substate nationalism or of the homeland community is hugely dependent on the home state, on the given Member State. As it was presented, the EU uses mainly “soft” measures in order to deal with national minorities, so minority questions belong to national competency. In spite of that, national minorities often try to seek help from the EU in legal, political or practical issues connected to their situation and rights.

It seems thus far that the EU puts mainly anti-discriminatory policies into its treaties and other instruments which can be used for minorities in general, and can provide the minimum requirement, or the starting point for future achievements. It is more likely, however, that the institution will remain at the non-discrimination principle, and will not take on other measures valid for the Union as whole. In some sense it seems that ethnic minorities claim “more rights” than the majority possesses. The self-government of the minority is seen by the majority as a right which puts them into a better situation, because these rights cannot be enjoyed by the majority or by other citizens.

42 CSERGŐ Zsuzsa – James M. GOLDGEIER: *Nationalist Strategies and European Integration*. The Hungarian Status Law. Nation Building and/or Minority Protection. Eds. KÁNTOR Zoltán, MAJTÉNYI Balázs, Osamu IEDA, VIZI Balázs, HALÁSZ Iván. Hokkaido University, Slavic Research Center, Sapporo, 2004, p. 279.

43 *Ibid.*, pp. 283–284.

44 *Ibid.*, p. 279.

On the other hand, functional and empirical arguments are against the territorial autonomy of CEE countries. It causes a high security risk because of the perception of majorities, and so it is likely that it exacerbates conflicts. The presence of ethnic kin states makes the situation even more difficult.

It also has to be added that in national minority topics the Central European states are affected the most. In the European Union as a whole the negligence can be to some extent understood, the minority issue does not concern the majority of countries. In States where national minorities live the consociational model would be a proper solution; however, it is hard to realize it because of the clashes of interests among the majority and the minority. Decision-makers are also afraid that minorities will claim more and more rights, as mentioned earlier, which in some cases could lead to territorial autonomy, or other groups of the society will also feel themselves authorized to acquire more benefits. It seems the EU minority protection policy will never be completed: the affected Member States and representatives of minorities have to initiate further negotiations on the topic, and they will have to deal with minority protection domestically.

As Bauböck argues, the conflict between national minorities and nation-states is not primarily about culture, but about the division of state power and the boundaries of political communities. The question is about the organization of multinational polities so that several projects of a political community can coexist. It is possible that cultural autonomy would harden the boundaries of national communities.⁴⁵

As it looks nowadays, consociational power-sharing would be one of the possible solutions for minority issues, however this cooperation needs mature and collaborative parties from both sides in order to successfully implement the project. Only the future will tell whether this or other forms of cooperation will come into existence.

Conclusion

In the paper some topics connected to traditional minorities of the European Union were analysed. It became clear that in spite of EU rules on minorities there are many “soft law” instruments, and a couple of international documents and EU treaties which could serve as a basis for minority protection, declaring mainly the importance of anti-discrimination towards national, ethnic and other minorities.

The rights of traditional minorities are often referred to as cultural rights, but it is only partly correct. National minorities in many cases claim also political rights, rights to self-determination, territorial rights, and so on. These rights in many cases cannot be respected by the decision-makers because, if fulfilled, minorities would be positively discriminated against the rest of the population, gaining “more” rights, which would not be supported by the majority. On the other hand, representatives

45 BAUBÖCK: *op. cit.*, p. 30.

of minorities in many cases can decide whether they would like to be a part of the minority group, assimilate or integrate into the majority society. It is the decision of the individual who enjoys the benefits and also suffer the possible disadvantages of belonging to a minority group.

Considering the evolution of the EU's minority protection system, it can be concluded that the situation and rights of minorities are not really developing. The lack of Member State interest, the pressing or more urgent questions of the organization, the consolidation of the economic and political situation all serve as hindrances from the focus on minorities, and "soft measures" evolve very slowly.

Finding a universal solution would prove almost impossible because minorities, and nations keep changing. Thus, even if there was a single model solution, it would lose its effectiveness over time, and each situation must be considered separately. Everything the nation-states do have significant cultural implications and a direct impact on the self-expression of national minorities.⁴⁶

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46 PORTER: *op. cit.*, p. 70.

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