The forgotten issue? Eastward enlargement and national minorities

Ruth Ferrero[1]

European Union (EU) enlargement in Eastern Europe faces many challenges. Among them are the unresolved issue of national and ethnic minorities within the states that are slated to join EU institutions in the near future. When we think about issues of minorities in the European context, we imagine it to be a very important question for all member states, as well as for those in relation with the candidate countries of Central and Eastern Europe (CEE).

We constantly hear from all quarters how important the protection of national minority rights and human rights is for the EU, but if we examine these issues carefully, we find that that is only true on the surface level of European policies. The whole question, in fact, does not go further than declarations of intent, in many cases forced by the international context. In the European case, this is partly due to the wars that devastated the Former Yugoslavia, which also have on the surface been seen as just "ethnic wars"[2].

This situation is compounded by the fact that the EU does not have a unified internal policy on national minorities. The specific features of the CEE region, with its multiethnic and multinational societies, make this process of political change much more complicated than the one that has been undertaken in Southern Europe. It should be pointed out, however, that the efforts made by the CEE states to establish pluralist and liberal democracies in order to speed up their integration into the Council of Europe, the EU and NATO, have been, in most of the cases, successful.

Though the enlargement process is already underway, a closer look reveals that accession in the first round will be reserved for those countries with the fewest problems of national minorities within their borders, countries which are also the most ethnically homogeneous and the most economically developed.

The implicit question raised by these developments, taking into account the next incorporation of some of the countries of CEE into the EU, is the extent to which the incorporation into European institutions can influence or effect attitude changes towards national minorities in CEE states. Furthermore, are there legal Communitarian mechanisms that are able, and intended, to control and regulate the respect for human rights and national minority rights? Once the enlargement is fulfilled, is the EU ready to absorb the national minority problems that exist today in the candidate states? Has the pressure by the international institutions, including the EU, to change some policies related to national minorities been useful?

The goal of this chapter is to give an overview of the developments that have followed the recognition of national minority rights in recent years and which perspectives and tendencies we can expect to see emerging in the framework of the EU.

Past and future: facts and choices to take into account

After the Wall fell, it became clear in Western European states that international legislation dealing with national minority rights was necessary. The problem thus became the type of national minority rights protection to adopt. It [needed to be?] should be one that avoided the problems provoked by the double standard policies followed by the Western countries in the past in relation to their Eastern counterparts. In the interwar period and under the auspices of the League of Nations, different standards were applied in different countries due to the concerns of Western countries about possible disturbances on their own soil (Núñez Seixas, 2001: 171-pp.). Additionally, Western countries were trying to retain as much sovereignty on this question as they could; as a British delegate stated in 1919 —

> "it would be very dangerous to allow the inhabitants or citizens of
> any State appeal directly to the League of Nations, and not through
> their governments only. If this principle is violated, we may arrive at

a situation in which, for instance, Francophones of Canada, American Jews, England Catholics, Welsh, Irish, Scottish, Basques, Bretons or Catalans would address to the League of Nations and denounce the abuses to which they have been subjected" (Healdam Morley, 1972 quoted in Núñez Seixas, 2001:175).

This was not the only case; after the Second World War the question of national minorities was addressed again, as Jonathan Eyal noted ─

"after 1945 Britain, France and the United States looked at cultural minorities in CEE and concluded that if all citizens were allowed to enjoy their civil rights irrespective of race, language or creed, all would be well. But these were essentially excuses, for both Britain and France entertained few illusions about the future of 'democracy' in CEE. Rather, they feared that an international system of minorities protection would apply to the West as well as to the East, and they were determined to prevent this from happening" (Eyal, 1989: 206 quoted in Young, 1995: 167).

As we see, then, the fear of repeating the same mistakes committed in the past was the main motivation of Western European states in 1990. As Kymlicka notes, "in an attempt to avoid the appearance of a similar hypocrisy today, Western countries have moved along two different and somewhat contradictory tracks. On the one hand, they have maintained but weakened the commitment to a universal, justice-based, minority rights track; on the other hand, they have created a new contextual, security-based minority rights track" (Kymlicka, 2001: 372).

The second track, then, allows EU countries, based on the concept of "international security," to ask for more demanding policies towards national minorities in CEE than in their own countries, taking as their departure point that national conflicts in Western European states are just "internal" affairs concerning

only the nation-state while national conflicts in CEE concern everybody. Of course, there was the logic followed at the beginning of the 90's, when the immigration problem in the EU was not so important or, at least, no so generalised, and the violence exploded in Yugoslavia. This is the departure point of all European regulations related to national minority rights.

On the other hand, we have the context of CEE countries, which has a strong influence on the way they see their national issues. "Discontinuity" and "empire" are the key concepts to understand the historical context of the area (Liebich, 1995: 313-317). Therefore, it is a problem that has been present throughout the times, under the classical empires, Austro-Hungarian, Ottoman and Russian, as well as in the Soviet-type regimes in force until 1989. Thus, before the Iron Curtain, numerous ethnic, economic and political conflicts had taken place in this region that oriented these countries in a totally different way than Western nation-states. The political and linguistic borders in Western Europe have suffered moderate changes in comparison with CEE, though they have been the origin of several conflicts that persist till today and that have an important role in the political life of European states. If this has happened, and continues to happen, to the countries that belong to the EU, it is much easier to understand the deep impact that the continuous border changes have had on the countries of CEE. In part, these discontinuities may be due to the lack of natural boundaries and to the unstable position of the Slavic languages and dialects of the region. The logical consequence is ethnic fragmentation with an absolute incongruence of political and ethnic borders that, also, drag with the weight of their recent history. Majoritarian communities or "titular nations" of these states therefore already know their weakness and fragility and that, historically, their existence is more the exception than the rule (Liebich, 1998).

Thus, we see the presence of multinational societies with historic minorities (Hungarians in Romania, Slovakia and Vojvodina, Turks in Bulgaria, Albanians in Macedonia and Kosovo, Russians in the Baltics), and transnational ethnic minorities such as Roma and Jews. Their presence negates, in most of the cases, the claim to historical and identity continuity among territory, state and majority that the titular

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nations try to build up.[3] In these cases, tensions have been multiplied because the ethnic majorities, on the one hand, feel a threat to their culture or demographic superiority and, on the other, express their solidarity with their co-nationals living in neighbouring countries in what are usually unfavourable economic situations.

These specific features of the region have had an impact on the process of political change that started at the end of the 1980s, and the variant of these features in South Eastern Europe, where the political strategy of the successor parties of the *ancien* communists parties tends, contrary to the cases of Hungary and Poland (which are ethnically very homogeneous (Basta, 2000: 47-62)) towards particularism. The uses of ethnic policies in South Eastern Europe profits from national problems and generate alliances with populist and radical-nationalists political parties such that ethnicity is the main criteria of resource distribution.

Due to the diverse ethnic conflicts that have been taking place in the Balkan region, the question that more frequently arises is why with the fall of the Wall and the disappearance of the Soviet-type regimes has again appeared a problem that seemed to have been overcome, the ethnonationalism, responsible for deep destabilising effects as the persecution of national minorities by the dominant group (Serbs by Croats, Hungarians by Slovaks and Romanians, Albanians by Serbs), or the violent (Bosnia-Herzegovina) or non-violent (Czechoslovakia) of the existent multinational states.

There are no convincing responses to these kinds of dilemmas. However, it is true that an exclusive nationalism among communities has been used by opportunist politicians as a very useful method of mass-mobilisation and as a base for the legitimation of those who sought to remain in power throughout the region, such as Milosevic in Former Yugoslavia, Meciar in Slovakia, Tudjman in Croatia, Iliescu and Vadim Tudor (the erstwhile poet of Ceausescu's regime) in Romania. Thus, ethnic nationalism has become the axis of cleavage in society, apparently above economic or political reasons, which assert that the collective rights of the titular nationalities have priority over the individual rights of the citizens and that the national minority group will be discriminated against by the majoritarian through restrictive policies in the use

of language, the closing of universities and schools in minority languages or criticism of the minority in the media.

The Eastern European context

The fall of the Berlin Wall inaugurated a series of changes in the countries of CEE both in the government systems as well as in state reorganisation. It was a new historical episode that used at the same time state- and nation-building that employed the means that were granted by majority rule and the integrity of states, in some cases, at the expenses of national minorities, through policies of cultural standardisation and nationalisation that strengthen ethnic conflicts.

This revival of ethnic tensions was due, essentially, to three factors. The first is the clear instrumentalisation of ethnopolitics[4] by elites, where some groups used political power to build up national identities while others used it to protect or reconstruct a national identity that they believe exists (Williams, 1999: 7-18). The second is reminiscences of the historical legacies of certain peoples. Third is the transitological dimension as potential conflict that includes socio-economic and regional factors within the so-called triple transition (Berg and Meurs, 2001: 129-163): the transference of sovereignty to the European level of decision-making, the importance of the regional co-operation (sub- and interstate) and the dialectal integration of the stages of the nation-building process.

We have to take into account that the model followed by the majority of the countries of the region in their nation-building processes has been an ethnocentric and distinctive conception of the nation-state, one more ethnocultural than political. This has led to the intent of building up a unique nation inside the state borders through the assimilation of minority groups, as well as through policies of immigration and naturalisation to protect and strengthen a concrete national identity (i.e., ethnopolitical) (Kymlicka, 98: 275-322) for which the point of departure of all these policies is the idea that "cultural standardisation" gives enough constructive capacity for the economic and political modernisation of the post-soviet states[5].

These nationalising practices are based on community building and the re-negotiation of citizenship borders and belonging (Russophones, Hungarians or Moldavians) (Smith, Law, Bohr, Allworth, 1999). Thus, identity is defined through categories based on essentialist considerations from the past that represent identities as linear, continuous and unique structures founded on the cultural purity of the nation in pre-socialist and pre-colonial periods. A rediscovery, thus, of the ethnic past and national histories is taking place. Therefore, the nation is built up within four parameters: the history of inter-ethnic relations; the reconstruction of myths, symbols and beliefs (Smith 2000, 1997 and 1986, Schöpflin, 2000); the collective memories and the relevant ethnic ideologies and policies followed by the different regimes.

However, the same developments have not been taking place in all these countries. Though in South Eastern Europe the validity of ethnonationalism is a fact, we cannot forget that in Poland, Hungary, the Czech Republic or Slovenia this has not been the case. In these countries minority conflicts have not been significant because of several convergent facts. On one hand, they are the more healthy economies in the region, as well as societies with more civic culture, which are also the most homogeneous, ethnically and culturally speaking (minorities are not more than 10%). The countries of this region are also the ones that have better met the requirements of the *acquis communautaire*. On the other hand, they are the ones that better respect the rule of law and its multinational reality, which have led to their neighbours to think that linguistic, cultural and educative standardisation mean an efficient national economy and a harmonious and loyal citizenship. We cannot forget here that Romania, Bulgaria, Serbia, Macedonia, Croatia, Bosnia and Albania are in deep economic crisis, have important national minorities or are in a post-war period and have fewer chances to join European institutions. This prompts them to close themselves off and support an exclusive and intolerant nationalism, which has been more a way to consolidate some elites in power than a mobilisation vehicle. Following this, ethnonational values were deployed in political discourse, not only by national minorities seeking more self-determination, but also in majority discourses, because it has proven to be the best way to maintain access to key economic and political

resources, as well as being a fundamental element in the practical definition of citizenship in these countries (Berg and Meurs, 2001).

It is in those countries where national minorities have been seen as a threat to the territorial structure and as a destabilising element, in domestic as well as in external politics,[6] especially when the minority population feel themselves to be ethnically[7] linked to other neighbouring states. This perception has promoted policies of ethnic exclusivism and preventive repression, all in the name of a core nation defined in ethnocultural terms, one radically different from the classical concept of citizenship which offers equal rights and sovereignty for all its citizens (Schnapper, 2002: 1-14). The application of these kinds of measures has produced precisely what they were designed to prevent: national minorities have looked for help and protection in their kinship states in order to defend themselves from the discriminatory policies as well as the hostile activities exercised by the majority, all of which confirms the latter's suspicions. Thus, the titular nation reinforces its position against the minority as enemy inside its internal borders and makes it responsible for all economic and social problems, which in turn promotes the internal cohesion of both communities. It is a relation with three actors: national minorities, linked by citizenship to one state and by ethnonational affinity to other; the nationalised states; and the kinship nations[8].

We have to add at this point that due to the collapse – some times peaceful, sometimes violent – of the federations created and recreated during the Soviet period, Czechoslovakia, Yugoslavia and the Soviet Union,[9] these countries have avoided decentralising solutions as a way out of their multinational problems, because, in the opinion of the elite of the majority, it is precisely these processes that lead to secession and the territorial disintegration of the state.

After this brief overview of situation in the region, it is necessary now to know what kind of rules and regulations with which the candidates must comply in minority rights issues in order to get the green light from the European institutions.

European Union, international rules and minority rights protection

The protection and participation of minorities is one of the founding principles of the EU[10]. It is implicitly incorporated through the notion of subsidiarity, which is manifested in the Maastricht Treaty, the European Council of Copenhagen[11], the Stability Pact for Europe, the European Agreements with the countries of CEE as well as the Amsterdam and Nice Treaties.

The Amsterdam Treaty made great advances in the inclusion of human rights in the framework of the EU. It should be noticed Article 6.1 (formerly Article F(1)) declares that the Union "is built up from the principles of democracy, respect for human rights and fundamental freedoms and the rule of law, all common principles in all the member states." Article 151 (formerly Article 128) in its paragraph 4 notes that the Community should take into consideration cultural aspects in their future actions from other provisions stipulated in the Treaty "to respect and promote diversity of its cultures." Furthermore, Article 13 (formerly Article 6a) allows the Council, under certain circumstances, to take measures to fight discrimination[12] based on ethnic or racial origin and religion, which represents a clear advance over Article 12, which limits non-discrimination only on the basis of nationality (Pentasugglia, 2001: 3-38).

This system allows to each European nation the effective participation in decisions that affect them directly. Thus, EU offers an example of inclusive norms and regulations to its constituents national minorities, though it is not given enough to its constituent states in relation to their own national minorities. The recent evolution in the protection of human rights has reinforced the non-discriminatory policies combined with an "agnostic" attitude (Amato and Batt, 1998) in relation to national minority rights. Thanks to the integration process, the EU has recognised the importance of minority rights, but there is currently no instrument or specific institution to deal with them on the legal basis. While equal opportunity for men and women appears detailed in an important number of European regulations, few of them refer to ethnocultural diversity or to the rights of ethnic groups (Toggenburg, 2000). In the European integration process, the intention of recognition for the

cultural and regional dimensions has not led to the devolution of local power to the existing territorial minorities inside of communitarian area. In institutional terms, we can even argue that European integration has reinforced rather than limited the importance of the states in relation to their local administrations (De Witte, 1993: 167 and ss). The exceptions are the binding declarations and resolutions for the member states. So, the effective protection of minority rights is limited, *strictu sensu*, to the external sphere of the EU and consequently to the candidate states.

Because of this lack of regulation on minority rights, the EU has delegated subsidiary international organisations to deal with this issue. Therefore, within the United Nations, the Council of Europe and the OSCE, a series of declarations and conventions dealing with the protection of minority rights began with the Declaration of Human Rights and recognition of new states in December 1991.

Their reference text[13] is the International Covenant on Civil and Political Rights of 1966 (UN), which reads in its Article 27,[14] "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, to use their own language"[15].

In this sense, we find, also by the UN, the Declaration of Rights to the Persons Belonging to Ethnic, Linguistic or Religious Minorities (1992). This declaration is considered an important point of reference, though it is legally non-binding. Following Article 27 from the International Covenant of 1966, this declaration stipulates rights for persons belonging to minorities, thereby opting for an individual-rights approach rather than a group-rights approach[16]. It should also be noted that Article 8 of this declaration clearly limits the scope of the right to self-determination within the framework of the declaration; the distinction between the rights of minorities and the principle of self-determination goes unmentioned[17].

In the Council of Europe Framework we should underline Recommendation 1201 (1993), which gives a definition of "national minority"[18] and the European Charter for Regional or Minority Languages, November 5 (1992). Most important,

though, is the Framework Convention for the Protection of National Minorities, 1 February 1995, which considers that a pluralist and democratic society not only should respect ethnic, cultural, linguistic and religious identity of the persons belonging to national minorities, but also has to create the necessary conditions that allow those collectivities to preserve and develop that identity, as well as reach a climate of tolerance and dialogue needed to enrich each society and not its division through the cultural diversity. The Framework Convention states in its first article, section 1, "[t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation" (1995).

The procedure to gain the access to the European "club" pass through the previous ratification of these conventions and treaties, as it was recognised in an opinion from the Commission in 1997. Here the Commission stated that "the observance of human rights is part of the *acquis communautaire*" (European Commission, 1997) to, afterwards, ask for fully adhesion to the EU, then they will acquire specific agreements.

On the other hand, the member states of EU have shown themselves to be more reticent that the candidates themselves in incorporating legal obligations and international commitments in the issue of minority rights. For instance, in July 2001, only four out of 43 member states of the Council of Europe had not signed the most important instrument in this question, the Framework Convention for the Protection of National Minorities, two of them were France and Belgium, one was a candidate, Turkey. From the seven that have not ratified the Convention, four were member states (Greece, Portugal, Holland and Luxemburg), while Latvia it is the only candidate that has neither signed nor ratified.

On 23 January 2001, the Parliamentary Assembly of the Council of Europe appealed to all states specifically to sign and/or ratify the Convention, and to reform their domestic legislation because otherwise "it would not have effects in the whole continent". The Assembly noted that "the price to pay if there is no success in giving a positive response to the necessities of national minorities would provoke an

increasing social tension, increase the numbers of persons seeking for asylum, weaken the unity among the member states of the Council of Europe and generalise a climate of insecurity" (Parliamentary Assembly of Council of Europe, 2001).

In the EU Framework itself the issue was discussed again in Nice in December 2000, in the editing process of the European Letter of Fundamental Freedoms, in which the intent was to include minority rights in an explicit manner. However, in the end, the most relevant provisions that were included were limited to forbidding discrimination (Article 21) and to the following statement: "The EU will respect cultural, religious and linguistic diversity" (Charter of Human Rights of EU, 2000). Once more, there was no mention to minority rights as collective rights.

Although there is not any specialised institution in the EU that works specifically with minority rights, it does not mean that those rights do not have any effective protection. There have been agreements following the legal tradition of some member countries for the protection of national minorities, sometimes through power cession to the regional authorities and decentralisation processes, sometimes through special measures in relation to minority rights, though with no application to "non-territorial" minorities. In some countries, the established democratic institutions allow the resolution of disputes on minority issues without the need of special instruments.

Thus, the only legislative measures taken by the EU – explicitly and very recently – are the ones related to non-discriminatory policies through the Race Directive (Council Directive 2000: 0022-0026). This directive shows a clear advance in the introduction and prohibition of indirect discrimination and harassment, extending the field of legislation related to non-discrimination beyond employment, which is the traditional sphere of protection in the EU. However, this directive has been criticised, particularly for its omission of references to religious discrimination, which is very often linked with ethnic or racial discrimination, as well as for the absence of specific norms referred to public services and institutions in its effective applicability. These omissions are, in fact, substantial problems, especially if we take into account eastward enlargement and the situation of some minority groups in the candidate states (Discussion Forum on Human Rights of the EU, 1999). These problems are all linked

to the absence of a focused legislation in relation to the maintenance of minority identities, languages and education, which states its clear preference in the debate over individual rights in front of collective rights, for individual rights. Therefore, the EU, as the United Nations before it, has been very cautious in the adoption of multicultural policies and ethnic diversity within its legal framework, though it is unavoidable that policies recognising multiculturalism and ethnic diversity are very slowly appearing in the Communitarian ideological landscape. Though for some people, non-discriminatory measures and minority rights can be contradictory, they can, in fact, be complementary. The non-discrimination principle helps to safeguard equality, and the minority rights help the preservation of diversity. While the first one guarantees the right of equality the second takes care of identity preservation.

The non-discrimination principle is limited to the claim of egalitarian treatment, without further reference to specific circumstances; however, it is not evident that a formal egalitarian treatment, under uniform conditions, will be enough of a guarantee of total equality in practice. Thus, in a lot of cases, formal egalitarian treatment can run counter to total and effective equality. On the other hand, we have the right to an identity. If a State refuses the recognition of languages, religions or costumes of its national minorities, the essential aspects of its identity, how can a State represent all its citizens and not merely the ones belonging to the majoritarian group?

Respect for minority rights as precondition for access to European Union

The "agnostic" approach on the minority issue is evident when we observe the communitarian policies towards the candidates. Of course, respect for human rights in general and for minorities in particular, are included explicitly in the Copenhagen criteria for accession.

In words of Amato and Batt, "Minority Rights have become an important item on the EU's external policy agenda in its relations with the new democracies of CEE, but have not hitherto featured in internal policy. This has led to the charge of

"double standards" on minority rights, which has weakened the credibility of the EU's position. The question is how far the EU can insist on minority rights for others without first putting its own house in order, especially in light of eastward enlargement" (Amato and Batt, 1998). In other words, how can the EU evaluate the candidate states given the absence of its own documents, procedures and institutions dealing with minority protection?

They are two options. The first is to use other organisations for monitoring tasks, such as the Council of Europe or the OSCE, along with the High Commissioner Office for National Minorities[19]. Secondly, the EU can reach its own goals through political bargaining with the governments of the candidate countries. In practice, the EU has pursued a combination of both. The European Commission consults the High Commissioner, while the Council of Europe and the OSCE have periodic non-public meetings.

One of the instruments used for the relations of the EU with the countries of CEE are the so-called "treaties of the second generation", which were basically commercial agreements signed by the future members (Association Agreements)[20], with the new states from the Former Soviet Union (Partenariat or Co-operation Agreements), and with some countries from South Eastern Europe (Co-operation Agreements). In all of them, a final remark appears that deals with human rights and democratic values, as defined in Helsinki Final Act and in the Paris Charter for a New Europe. One of the essential elements of these agreements is that they allow the parties to end such agreements in case that this final remark is not fulfilled (Pentasugglia, 2001: 3-38). In both, the question of protection of minority rights in the context of human rights, according to the principles of non-discrimination and equality before the law, appears again. The Charter of Paris states that " rights of persons belonging to national minorities should be respect as part of the universal human rights", these persons have "the right to express, preserve and develop freely their religious, cultural, ethnic and linguistic identity", and "reaffirm that identity of national minorities will be protected, as well as necessary conditions will be created to promote such identity".

Another step in this sense was the organisation of the Conference on the Stability Pact in Europe, also known as the Balladur Pact (Paris, 1994), which combined conflict prevention with minority problems solution. They were organised two roundtables, one for the Baltic states (Estonia, Latvia, Lithuania and Poland) and other for six Central European states (Bulgaria, Hungary, Romania, Poland, Slovakia and Czech Republic). Finally, the Stability Pact for Europe was signed in 1995 for 52 countries members of OSCE, as a treaty of political character, though it is legally non-binding. It is formed by a declaration and a list of agreements adopted by some CEE countries among them, which deal, totally or partially with the issue of minority protection, the respect for their differential facts and legal recognition by the State in which they live. Thus, the fundamental question here is the immobility of the established borders and conflict prevention and security in Europe, all of which focus on especially in the Hungarian minorities established in different countries of Central Europe. In this sense, some important treaties were incorporated such as the Good Neighbourhood treaties between Hungary and Romania, signed in September 16, 1996, due to both parties committing to observe what has been noted in the Framework Agreement for Protection of National Minorities of the Council of Europe.

It has to be mentioned also that EU intervention has caused, without any doubt, substantial changes for the better in these countries, for instance in the Czech Republic and Romania (Ram, 2001). However, the conclusions raised by John Parker, Legal Assessor of the High Commissioner for National Minorities, OSCE, are still valid: "We have serious worries that if there does not exist a valuation procedure at the internal level of the EU and if there is not an annual evaluation, the new member states will face less pressure to reach the human rights levels required" (Forum of Discussion on Human Rights of the EU, 1999).

We have to point out two essential aspects of this problem. On one hand, the pre-accession controls have been crafted on the presumption that the situation of the candidates will be improving and reaching the levels expressed by the Copenhagen criteria. The pressure has provoked a lot of formal rules and regulations on the

minority issue of the candidate countries, though that does not mean that the problems are sorted out. The candidates could "import" minority problems to the EU, and after accession, once they are *de facto* members, trying to sort those problems out will be too difficult due to the weakness of a specialised framework in minority rights and also because of the rule of non-interference on minority issues inside the states of the Union. As Andre Liebich (1998) notes, the EU is going to incorporate a significant number of new members with important national minorities, into system where the older members have more integrated minorities, but where the culture of minority promotion and minority rights is more developed, very often through regionalisation processes. Thus, national minorities from Western countries will reinforce and intensify their strategies to gain wider recognition. At the same time, the new members will call for rules and antecedents already recognised in other member states, including cultural autonomy and sometimes, territorial autonomy, in order to improve their situation.

Conclusions

The absence of homogeneity in the legislation regarding minority rights in the member states, as well as the lack of rules that lead to the resolution of practical issues related to minorities, such as education in minority languages, collective rights versus individual rights or autonomy versus integration, have greatly complicated the internal reform of the candidate members. The philosophy followed until now by European institutions has been that minority policies were a domestic issue of the states, due to the member states not having strict controls in this sense, and it is entirely possible that new conflicts of values will arise and be very difficult to sort out due precisely to the absence of a homogeneous set of Communitarian rules and policies, as has been shown by the EU when it is dealing with this kind of problems in the post-accession period, as in the Austrian case. In words of the Commission, "Enlargement will modify the Union's geopolitical situation and its proximity to critical zones in Eastern and South Eastern Europe. Bilateral disputes involving acceding members, and issues

related to national and ethnic minorities, could burden the Union's cohesion and its Common Foreign and Security Policy, and would have to be effectively tackled before accession" (Impact Study 1997).

The pressures from the EU in relation to minority protection have had direct and indirect effects. Thus, the incorporation of new internal regulations on the obligations to and protection of minority rights stated by international laws such as the *European Convention of Human Rights and Fundamental Freedoms*, add new obligations to the governments of candidate countries and offer to their citizens new ways to protect their rights outside the domestic arena. In the same way, these international pressures have had an influence on the transition processes: the level and kind of help that the foreign investment is going to give them is conditioned by the inclusion of the international rules and regulations on minority issues, the international sphere acting as a referee in the internal conflicts of those countries, fomenting the adoption of inclusive policies on national minorities and demanding integration on the basis of civil and individual liberties. The consequence has been that the elites in power have become more pragmatic and self-secure; as they implement strategies aimed at obtaining EU funds for regional development, they often tend to forget their traditional nationalist discourse and their aversion to regionalism, which allow the EU to include clauses on minority rights for obtaining those funds.

The impact of the enlargement process, coupled with the tendency towards globalisation, in sorting out bilateral problems on the future border of the EU transforms them into European problems and responsibilities, while at the same time increasing the importance of the sub-state regions. On the other hand, we should not forget that the "ethnopolitical" and economic arguments demonstrate the ethnic dimensions of several areas implied in the integration process. Thus, the main way in which the EU can achieve some consolidation and stabilisation in the area, is not through the direct interference in the classical legislation on national minorities, but in balancing regional and socioeconomic asymmetries within the nation-State in a manner that does not produce further ethnic conflict, and allows for the adequate redistribution of resources, as well as the decentralisation of the distributive powers,

both before and after the enlargement. However, we cannot forget the Schengen rules, which form the basis of a post-modern empire that allows the loss of control of the centre over the periphery, in its actual practice will aggravate ethnic tensions along the future external border in the same way that it will create favourable conditions inside its borders. Outside the frontier, European identity will be exclusive more than inclusive, European policies will generate more asymmetries in relation to stability and socioeconomic prosperity and even can provoke the presence of "delinquent regimes" in the European periphery.

In conclusion, minority rights have increasing importance on the European agenda due to the combination of "enlargement" and "deepening". Money is neither the origin nor the solution of minority issues. The possibility that new minority problems will arise, either within or outside the borders of a enlarged EU, calls for an increasing in the devotion of resources specifically focused on this question, among which should be regional, educational and cultural programmes.

The entrance into the EU guarantees nothing, though it could become an excuse strong enough that the respect for human rights, minority rights and the rule of law will be a real fact and not "wet paper", in both the candidate states and the actual members.

Notes

[1] This research has been possible thanks to a Postgraduate Fellowship from the Fundación CajaMadrid.

[2] For clarification on this issue see Veiga, 2003.

[3] Liebich (1998) notes that "minorities are a disturbing reminder that, in political terms, Slovakia was not always Slovak, the Czech Republic was not Czech, Bulgaria was not Bulgarian and so on. At the very least, they recall that even recently parts of today's Poland were not Polish as parts of Romania were not Romanian. Inasmuch as the legitimacy of state units in East Central Europe is founded, to an even greater extent than in Western Europe, upon myths of national community, nay, of perennity, minorities are an unwelcome presence".

[4] Ethnopolitics consists, fundamentally, in all those relevant policies in the relation among majorities and minorities, nation building and ethnic minorities (Rothschild, 1981).

⁵ This is not new for Western Europe. It has happened in past, with the State-building processes, and it is happening now with the continuous application of restrictive policies towards the new immigration population. The arguments are often similar, especially with Muslim populations.

⁶ The presence in border regions of communities with an ethnic belonging claimed and a political affiliation less clear in CEE is one of the main symbolic problems, a potential security risk, a factor that shows the gap of security among East and West, provoking uncertainty, something that the EU is not going to accept, especially if all that insecurity is inside its borders.. (Berg and Meurs, 2001; Smith, *et al 1999*; Brunner, 1996).

⁷ Following A.D. Smith (1995: 45-65), by the term "ethnic community" we understand a unit of population sharing: 1) A common proper name, 2) Myths of common ancestry, 3) historical memories, 4) one or more distinctive elements of culture, 5) an association with a given territory, 6) a sense of social solidarity.

⁸ A state becomes an "external kinship nation" when its political and cultural elites consider some citizens from other states as co-nationals. (Brubaker, 1996, Berg and Meurs, 2001).

⁹ For more details in these cases, see: Palacios, 2003.

¹⁰ Minority protection was virtually absent from the EU Agenda in the pre-Maastricht period.

¹¹ See Copenhagen criteria (1993), that stated that the needed political criteria for accession is that the interested countries catch up "stability in the institutions that guarantee democracy, rule of law, human rights and respect and protection of minorities". Bulletin of the European Community 1993.

¹² The principle of non-discrimination is a fundamental element of minority protection, though it is not enough to protect the identity of minority groups within a society. As international norm it does not prohibit discrimination between a state's own citizens and foreigners, which means that those persons belonging to a minority who are not eligible for citizenship are not guaranteed equal treatment and also, minority protection requires affirmative action to an extent that may not be covered by a non-discrimination provision (Bloed and van Dijk, 1999).

¹³ We cannot forget that, although the UNESCO Convention Against Discrimination in Education from 1962 has not excluded the idea of separate schools for linguistic minorities, it does treat them as an exception that has to be tolerated, not promoted. The goal of this text is obtaining a homogeneous education against educative segregation (a phenomenon very common at that time). Thus, the UNESCO Convention is still invoked to justify the refusal towards minority claims to have their own schools, on the basis that education in the official language is the only way to assure real equality and non-discrimination.

¹⁴ It should be noticed that this article has been formulated in "negative" terms (shall not be denied), though recognises the existence of a "right" and aims at guaranteeing that this right should be not denied. (See Bloed and van Dijk, 1999).

¹⁵ It is important notice at this point the well-known reserve made by France in this particular article and its refusal to groups rights inclusion in the actual constitutional framework or in a revisited one, all these confirmed by the Conseil constitutionnel decision of June 15, 1999 (Pentassuglia, 2001).

¹⁶ It should be noticed here, that in contrast with Article 27 of the International Covenant, the Declaration is formulated in positive terms: "Persons belonging to minorities have the right …" (see Bloed and van Dijk, 1999).

¹⁷ Article 8, paragraph 4: "Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the UN, including sovereign equality, territorial integrity and political independence of States".

[18] Article 1: "refers to a group of persons in a state who: a) reside on the territory on that state and are citizens thereof; b) maintain long standing, firm and lasting ties with that state; c) display distinctive ethnic, cultural, religious or linguistic characteristics, d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e) are motivated by concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language".

[19] In the Helsinki Summit of July 1992 the post of High Commissioner on National Minorities was created in response to the growing threat of international conflicts, or more specifically, European conflicts after the collapse of the soviet-type regimes in CEE and the necessity of taken an active action to prevent, after the Yugoslav wars, future conflicts. So the mandate of the High Commissioner is basically conflict prevention: "The High Commissioner will provide 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating states, requiring the attention of an action by the Council or the CSO".

[20] Association Agreements were signed by Poland and Hungary (1991); Bulgaria (1992); Romania, Czech Republic and Slovakia (1993); Estonia, Latvia and Lithuania (1995); and Slovenia (1996).

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