

THE BOLZANO/BOZEN DECLARATION



*on the Protection of Minorities
in the Enlarged European Union*

Bolzano/Bozen/Bulsan
May 1, 2004

INTRODUCTION

“Respect for and protection of minorities” comprises one of the prominent Copenhagen criteria which candidate countries to the European Union have had to fulfill in the past decade. Various pre-accession instruments have served to streamline candidates’ attitude vis-à-vis their minorities. In the EU’s internal sphere, however, this topic has remained very much a non-topic. Will minority protection vanish from the EU “scene” once the candidate states acquire full EU membership?

In response to this question, the Local Government and Public Service Reform Initiative (LGI) of the Open Society Institute (OSI) and the European Academy Bolzano (EURAC) organized “Minority Protection and the EU: The Way Forward.” This conference was hosted by EURAC in Bolzano/Bozen/Bulsan, Italy, January 30–31, 2004, and co-sponsored by LGI and the European Commission. The conference joined a range of experts, policymakers, and NGO representatives to address how the importance of the integration and protection of minorities (which are acknowledged at the political level) could be transformed into concrete legal instruments inside the framework of the newly-enlarged and re-designed European Union. Conference proceedings will be published in mid-2004 by LGI.

This declaration is an additional outcome of the conference and forms an integral part of the conference proceedings. It comprises a package of policy proposals for an enlarging EU in the area of minority protection. The declaration builds on a rising policy consensus that the Union—in addition to the member states, the Council of Europe, and the OSCE—has to play a certain role when it comes to the protection of European minorities. Nevertheless, the declaration takes account of the special nature of the EU, the principle of subsidiarity, the danger of possible duplications, and the existing diversity of approaches regarding minorities. Though neutral in its opinion, the declaration highlights what is politically and legally possible within existing policy and demonstrates how the protection of minorities can be strengthened in a consistent manner. It reflects the issues and views raised and discussed at the conference in Bolzano/Bozen/Bulsan.

PREAMBLE

Today, May 1, 2004, the expanding European Union (EU) welcomes 75 million new citizens. With this expansion, the number minority groups within the EU will more than double. The population of the enlarged European Union will become considerably more diverse in terms of culture, ethnicity, and language. Before enlargement, the European Union was actively engaged in enhancing the situation of minorities living in candidate states and undertook initiatives to ensure political stability during the accession process. When it came to the rights and treatment of minorities within the old member states, however, the political discourse and the legal provisions within the EU framework remained largely silent. Now that the candidate states have become fully fledged EU members, this glaring double standard must come to an end. It remains an open question whether the new and old member states will opt to retreat into a tacit consensus and disregard the problems faced by the minorities in their midst or whether the enlargement experience will stimulate a constructive effort to improve minority protection.

At the beginning of 2004, some ninety NGO representatives, experts, and political figures convened at the European Academy in Bolzano/Bozen to discuss the EU's engagement in the area of minority protection after enlargement. The signatories of this Bolzano/Bozen Declaration were all speakers and respondents who presented papers at that event.¹

On May 1, 2004, the 16 undersigned respectfully submit the following proposals to the European Union and its member states, old and new, for urgent consideration.

- 1. Improve monitoring of candidate states**
- 2. Integrate minority protection into EU monitoring of human rights within member states**
- 3. Strengthen the EU as a community of values**
- 4. Improve the cooperation among the European Union (EU), Council of Europe (CoE), and Organization for Security and Cooperation in Europe (OSCE)**
- 5. Bring to life the new constitutional motto “united in diversity”**

¹ This declaration forms an integral yet distinct part of the proceedings of the conference “Minority Protection and the EU: The Way Forward.” An anthology of key papers will be published by the Local Government and Public Service Reform Initiative (LGI), Open Society Institute–Budapest. To order the volume underlying the Bolzano/Bozen Declaration and edited by Gabriel N. Toggenburg, please contact: Local Government and Public Service Reform Initiative, Nádor u. 11, Budapest, Hungary H-1051, lgipublications@osi.hu, <http://lgi.osi.hu>
For more information on the PECEDE (Platform for an Enriching Culturally and Ethnically Diverse Europe) project visit <http://www.eurac.edu/pecede>

The enlarged European Union should take the following actions to enhance protections for persons belonging to minorities.

1. IMPROVE MONITORING OF CANDIDATE STATES

- In the framework of the accession negotiations with Bulgaria, Romania, and, eventually, Turkey and any other future candidate states, the European Union should improve the consistency, credibility, and thereby the potential impact of its assessments of national policies regarding minorities.
- The European Union should intensify its institutional dialogue with the Council of Europe. When assessing the performance of candidate states in the area of minority protection, the Union should use the standards the Council of Europe has developed. The Union should continue, for example, to rely and draw upon the findings produced through instruments such as the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM).
- The European Union should considerably improve its in-house expertise in the area of minority protection, but avoid duplicating efforts that the Council of Europe has already undertaken. The Union should increase the number of European Commission personnel who monitor minority situations in candidate states.
- The European Union's future monitoring effort should be transparent. Its reporting should draw explicit links between its sources of information, its findings, and any recommendations that may flow from them. The monitoring effort should also be made consistent by focusing not only on a candidate state's formal compliance with international standards but on the process by which it complies in practice at the national, regional, and local level.

Explanatory note:

Overall, the European Union's monitoring of candidate states' policies in the area of minority protection sparked considerable activity and some positive changes.

As a result, minority-group representatives and advocates in the new member states now have tools they lacked 10 years ago. These tools include more relevant minority legislation, more public policies to which the governments can be held accountable, an increase in the amount of reporting and information on the situation of minority communities, and greater experience in utilizing the relevant international instruments and mechanisms to draw attention to domestic concerns.

The European Commission tended to focus primarily on the existence or absence of formal measures. The Commission itself and many other observers, however, have noted a serious and persistent lack of implementation of these formal measures. The Commission has been less than effective in addressing this problem for two reasons.

First, the EU has insufficiently developed standards on minority protection, which the Commission itself acknowledged, in a vague manner, when it referred to external standards, mainly from the Council of Europe.

Second, the Commission lacks monitoring capacity.

Although the Commission's *Regular Reports* on candidate countries followed a uniform general structure, these reports suffered internal inconsistencies that weakened their potential impact. The reports also based their findings upon numerous sources that were of varying reliability and quality; and the Commission itself was not in a position to conduct its own research to address important gaps in available data. In short, the Commission proved to be hardly capable of offering a systematic assessment of the institutional frameworks and policies dealing with minority groups.

The lack of an effective monitoring capability is all the more worrying because the Copenhagen criteria for minority protection are still crucially important. These criteria will require additional EU attention after May 1, 2004, for assessing the situation of minorities in Turkey and in a number of Balkan states currently involved in the EU's stabilization and association process.

Recent events in the region only underscore this point.

2. INTEGRATE MINORITY PROTECTION INTO EU MONITORING OF HUMAN RIGHTS WITHIN MEMBER STATES

- The European Parliament should introduce a separate subheading on minority rights into its regular reports on human rights.
- If the European Commission submits a proposal to expand the mandate of the current European Monitoring Center on Racism and Xenophobia (EUMC) in Vienna, this proposal should pay requisite attention to the protection of minorities.
- If the European Union establishes a human rights agency or monitoring mechanism, member states should be required to submit annual reports containing a separate subheading on minority rights. If the EU extends its activities into the area of human rights, it should take into account the Council of Europe's experience and seek close inter-institutional cooperation.

Explanatory note:

There is a discrepancy between the law and reality when it comes to the treatment of minority groups in the new EU member states. Several old EU member states have also failed to collect sufficient data on the situation of their own vulnerable minority populations and have not adopted specific legislation and policies to ensure comprehensive minority protection.

Independent reporting on the situation of minority groups does not fill the gap left by the lack of EU oversight and critique and the lack of government-generated data. For this reason, it would be highly undesirable if the new and old member states would now relax and become inactive in the area of minority protection.

Such a development would, in the words of the OSCE High Commissioner on National Minorities, “raise serious doubts about the normative foundations of the EU itself,”² and have especially serious repercussions in current and future EU candidate states. Hence, it is of the utmost importance to maintain the “minority momentum” developed during the enlargement process.

The goal in both new and old member states should be to achieve and maintain inclusive societies that offer sufficient space to minorities and their cultures. Achieving this goal will require raising awareness of the fact that the European reality is a reality of substantial diversity and that this diversity includes numerous minorities.

Raising this awareness will require the collection of information, analysis, and the generation of findings and recommendations. To carry out these tasks, the EU must be able to monitor minority protection in the member states themselves.

For several years, the European Parliament has completed human rights reports on member states. In 2002, the European Commission created a network of independent experts, one from each member state, who annually assess implementation of the rights set out in the European Union’s Charter of Fundamental Rights, including Articles 21 and 22. However, neither the reports drafted by Parliament itself nor the “out-sourced” reporting system of the network of experts guarantee an ongoing review and the necessary input from member states. They do not even guarantee adequate engagement of EU institutions and member states. As a counterweight, the internal monitoring procedures in the enlarged EU must be enhanced.

Representatives of the EU member states stressed in December 2003 the “importance of human rights data collection and analysis with a view to defining Union policy in this field” and agreed “to build upon the existing European Monitoring Center on Racism and Xenophobia and extend its mandate to become a human rights agency.”³ It would be appropriate in this context to introduce a provision into the new EU constitution that clarifies that the Union has the authority to monitor the human rights performance of member states even when these states are acting in areas of their own competence.

The Union should not duplicate efforts undertaken in the framework of the Council of Europe, but it should seek close cooperation with the latter in the area of human rights. The EU’s accession to Council of Europe instruments in the first line of the European Convention of Human Rights is an important step.

² R. Ekeus, *From the Copenhagen Criteria to the Copenhagen Summit: The Protection of National Minorities in an Enlarging Europe*. Available online at http://www.osce.org/hcnm/documents/_speeches/2002

³ Paragraph 3 of *Conclusions of the Representatives of Member States*, December 13, 2003. Available online at <http://ue.eu.int/pressData/en/misc/78398.pdf>

3. STRENGTHEN THE EU AS A COMMUNITY OF VALUES

- The next IGC should draw on the proposal of the Italian EU Presidency, delivered at the end of 2003, to expand the founding values of the EU currently listed in Article 6 TEU by amending Article 2 of the draft constitution to include the following passage: respect for human rights, "including the rights of persons belonging to minorities as developed within the Council of Europe."

Explanatory note:

Article 6 TEU (Treaty establishing the European Union) lists the basic values upon which the "Union is founded," and which are, at the same time, "common to the member states."

This internal dimension is complemented by a clear external dimension, as Article 49 TEU refers to these principles in prescribing that only those European States "which respect the principles as set out in Article 6(1)" may apply for EU membership. These founding principles contain all of the political criteria of Copenhagen except the protection of minorities.

The European Commission is of the opinion that "the political criteria defined at Copenhagen have been essentially enshrined as a constitutional principle" and that Article 6 TEU also comprises the protection of minorities.⁴ Indeed the practice of the Commission and the Council vis-à-vis candidate states confirms this view; nevertheless, a corresponding practice regarding member states is missing.

The fact that the member states' constitutional traditions with regard to minority protection differ significantly does not exclude the possibility that minority protection may be considered a common principle of European law. Neither does the fact that one-fourth of the member states have not yet ratified the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM).

The Court of Justice has never considered itself limited to establishing common principles of law only at the lowest common denominator amongst the member states. Thus far, the Court has not taken a clear-cut position on the status of minority protection under EU law; it has, however, recognized the protection of minorities as a "legitimate aim" of national policies.⁵

It is crucially important to enshrine the protection of minorities as one of the EU's basic values in order to give substantive meaning and concrete effect to the "EU-speak" about inclusion, tolerance, and diversity.

⁴ See footnote 3 of the Commission's *Regular Reports* from October 9, 2002. Available online at <http://europa.eu.int/comm/enlargement/report2002/index.htm#report2002>. Compare also various replies to written questions in Parliament such as *Reply to Question E-2583/01* (Vittorino), *OJ C 147 E*, June 20, 2002: 28 or *Reply to Question P-0395/02* (Reding), *OJ C 160*, July 4, 2002: 214.

⁵ Case 274/96, *Bickel and Franz*, [1998] ECR 7637, par. 29. Available online at http://curia.eu.int/en/content/juris/index_form.htm

Article 2 of the constitutional treaty as drafted by the European Convention in 2003 lists the values of the current Article 6 TEU and describes them as being “common to the member states in a society of pluralism, tolerance, justice, solidarity and non-discrimination.”⁶

During the IGC at the end of 2003, the Italian Presidency went even further, proposing the amendment of Article 2 to include the following provision: “... respect for human rights, including the rights of persons belonging to minority groups.”⁷

Including minority protection among the EU’s constitutional values with such explicit language would be of considerable symbolic importance and would help to augment legal certainty. Even so, it would still leave the Union without a legislative competence in the area of minority protection. Neither would it extend the *de facto* scope of the sanctioning procedure as laid out in Article 7 TEU. The thresholds of this procedure are very high, and a material and persistent violation of basic minority rights already could trigger a sanctioning procedure under the existing circumstances.

4. IMPROVE EU-CoE-OSCE COOPERATION

- The European Commission’s Directorate General for Justice and Home Affairs as well as the Directorate General for Culture should enter into regular and institutionalized dialogue with the two independent and expert committees supervising the implementation of the Council of Europe’s Framework Convention as well as its Language Charter. The same goes for Parliament’s Committees for Human Rights and Culture. This will enable EU institutions to identify problem areas needing special attention, and these areas must be considered when determining aims, financial guidelines, and priorities under relevant EU policies.
- The European Commission should make more active use of the Framework Convention when monitoring candidate states’ performance in the field of minority rights. For example, the Commission should take part regularly and actively in monitoring debates in the Committee of Ministers or make use of the Union’s political weight in order to leverage the Committee of Ministers to ask a state to submit a timely report on relevant issues.⁸

⁶ Draft treaty establishing a constitution for Europe, July 18, 2003, CONV 850/03:5. Available online at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>

⁷ The French version reads: “... respect des droits de l’Homme, y inclus des droits des personnes appartenant à des minorités.” See CIG 60/03 ADD I, December 9, 2003. Available online at http://ue.eu.int/igcpdf/en/03/cg00//_cg00060-ad01.en03.pdf

⁸ Resolution (97) 10: rules adopted by the Committee of Ministers on the monitoring arrangements under articles 24 to 26 of the FCNM. Available online at <http://cm.coe.int/ta/res/1197/97x10.html>

- Joint program planning between the Union and the Council of Europe should be intensified in both quantity and quality. Emphasis should be placed upon cooperation on equal terms, based not only on joint action but also on joint planning and programming.
- As regards the evolving common foreign and security policy of the EU—tasked to “safeguard common values”—the OSCE High Commissioner on National Minorities (HCNM) should be invited to assist in developing approaches to and policies toward third countries, including: the conditionality of aid and trade, support for EU conflict prevention and preventive diplomacy, and developing EU and EC expertise within the offices or at the disposal of the prospective new EU foreign minister.
- The EU foreign minister and representatives of the Political and Security Committee should convene once a year in order to exchange information and observations with the HCNM.

Explanatory note:

During the enlargement process, the European Union drew extensively upon the experience of the OSCE and the Council of Europe, particularly in the area of monitoring. It became evident that effective cooperation between these three organizations is essential in order to obtain effective performance in the area of minority protection.

While the Council of Europe and the OSCE High Commissioner on National Minorities (HCNM) could offer valuable insights and advice on applicable standards, the EU had the additional incentive of membership at its disposal, combined with financial aid that could be concentrated on specific minority-related projects.

With the addition of the 10 new member states and the potential decline of the Commission’s leverage, further cooperation between the EU and OSCE has become essential. Only if these organizations take cooperation seriously will they avoid duplication of effort and enhance their efficiency and effectiveness. In particular, the European Commission should take into account the findings and developments in the framework of the two principal Council of Europe instruments—the European Charter for Regional or Minority Languages and the FCNM.

Having developed a significant “soft-law jurisprudence” through Committee of Ministers’ resolutions and Advisory Committee opinions, the FCNM is the most comprehensive legally-binding multilateral instrument in the field and should be a major reference for the Union. The Union should exercise its political weight whenever possible in order to improve adherence to this instrument and the standards developed therein.

These inter-institutional links should be formalized and joint planning and programming of activities should be enhanced. This would also serve to counter the risk that useful contacts between institutions of the Council of Europe, the OSCE and the European Union will diminish now that the first wave of enlargement is completed.

The Union should bear in mind the useful cooperation with the OSCE during enlargement and make greater use of the HCNM’s accumulated expertise in examining situations within EU territory. This is especially true with regard to the problems of

statelessness; divided societies, such as in the Baltic states; and areas of persistent tensions, such as Corsica and the Basque country. The HCNM could provide friendly assistance, just as it has in Greece and Northern Ireland, and share expertise, as it has in Sweden (with ratification of the FCNM) and Finland (with reform of language legislation).

New areas for useful cooperation between the HCNM and the EU also should be considered. These might include cooperation in forming EU foreign policy and in easing new tensions that may arise within the enlarged Union's increasingly diverse societies.

5. BRING TO LIFE THE NEW CONSTITUTIONAL MOTTO "UNITED IN DIVERSITY"

- The Commission should report annually on compliance with the horizontal integration clause (Article 151, par. 4 TEC). This report should examine the effects of EU secondary legislation and the extent to which it takes into account linguistic diversity, specific national and regional features, and the cultural heritage of member states and regions under EU policy. This "diversity impact report" should be delivered to national parliaments and the Committee of Regions.
- The Commission should propose a multi-year program for linguistic diversity with funds earmarked for regional and minority languages. Moreover, the IGC could introduce an article on linguistic diversity, as was recently proposed by the European Parliament in the Ebner report. In addition, EU anti-discrimination provisions should be amended to include the word "language" in Article III-8 and Article III-3 of the draft constitutional treaty (currently Article 13 TEC). This would give the Union the competency to take measures against linguistic discrimination, a form of discrimination which is *expressis verbis* forbidden according to Article II-21.
- The constitutional treaty should explicitly provide room for affirmative action also in areas beyond gender discrimination. Accordingly, Article III-8 of the draft constitutional treaty should be amended to include a third paragraph which reads as follows: "With a view to ensuring full equality in practice, the principle of equality shall not prevent the maintenance or adoption of Union or member states' measures to prevent or compensate for disadvantages linked to discrimination on the basis of the grounds listed in par. 1."
- In order to underline the important sub-national dimension of diversity, the next IGC should amend Article 3 of the draft constitutional treaty (the Union's objective) by adding the following specification (indicated in italics): "The Union shall respect its rich cultural and linguistic diversity *at the national and sub-national level*, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."

Explanatory note:

The draft constitutional treaty promotes "united in diversity" as a motto of the European Union (Article IV-1). In this respect the proposed treaty could build on a considerable

“diversity *acquis*” in existing treaties. The Charter of Fundamental Rights obliges the Union to respect “cultural, religious and linguistic diversity.”

It remains unclear, however, to what degree the notion of “diversity” extends beyond diversity *between* member states to cover the crucial levels of cultural, religious, and linguistic diversity *within* member states. To conclude that “diversity” refers only to national cultures would considerably reduce the significance of this concept for tens of millions of European citizens. Some parties—such as the EU network of experts—read Article 22 as a minority protection clause.

In any case, a clear minority dimension is found in the Union’s anti-discrimination *acquis*. Article 21 of the charter expressly forbids any discrimination based on “membership to a national minority.” Still, the most efficient minority protection tool under the EU regime appears to be the legally binding Council of the European Union directive “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.” This directive establishes a broad protective shield against various forms of ethnic discrimination and is of crucial importance especially for third-country nationals, that is, “new” minorities.

In order to meet its internal constitutional commitment to diversity and maintain the minority consciousness developed in its external relations over the past years, however, the Union will have to do more than simply forbid discrimination.

One hopeful development is found in the Maastricht treaty, where the “horizontal integration clause” obliges the European Community to “take cultural aspects into account in its action under other provisions of this treaty”—that is, outside the field of culture—“particularly in order to respect and promote the diversity of its cultures” (currently Article 151, par. 4 TEC).

Thus, the promotion of minority cultures can be—and, if one defines culture more broadly—should be an integral part of all European legislation. Unfortunately, it seems the European Union still has not taken seriously its mandate to protect the various forms of European diversity.

The EU Lingua program is a good example: while it aims to foster less widely-taught languages, it excludes regional and minority languages. Another example, the current action plan on language learning and linguistic diversity, addresses regional and minority languages but fails to earmark specific funds for such fields—a fact that seriously dilutes the minority component of the EU’s language policy.

Within the Common Market—which seeks to create economic unity while preserving cultural diversity—special weight must be placed upon the subsidiarity principle, the observance of which has been entrusted to the Committee of Regions and national parliaments by the draft constitutional treaty.

According to the proposed protocol on the application of the principles of subsidiarity and proportionality (attached to the constitutional treaty), any national parliament may, within six weeks from the date of transmission of the Commission’s legislative proposal, send a reasoned opinion stating that the proposal does not comply with the principle of

subsidiarity. When more than one third of the parliaments oppose the measure for this reason, the Commission will have to review its proposal. Moreover, if a legislative act is found to infringe on the subsidiarity principle, the Committee of the Regions may initiate proceedings before the European Court of Justice.

Making use of the EU's "diversity *acquis*" in the founding treaties and the EU legislation can make "diversity" a living practice.

Completed, Bolzano/Bozen/Bulsan, May 1, 2004

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