
Olivier De Schutter

Abstract

This study of the role of the Framework Convention for the Protection of National Minorities in the law and policy of the European Union seeks to contribute to a debate concerning the relationship between the fight against discrimination in the EU, and the protection and promotion of minority rights. Whereas the EU has spectacularly occupied the field of antidiscrimination in the recent years, in some respects even overshadowing the efforts made by the Council of Europe in this field, it has been reluctant to address the question of minority rights, some Member States taking the view that the latter route was unnecessary if a strong antidiscrimination agenda was pursued. Yet, enlargement of the EU has brought the question of minority rights to the forefront of the political debate. Whether the EU should develop a specific policy aiming at the integration of minorities, which tools it has at its disposal to do so, and how this would affect the relationships between the European Union and the Council of Europe, are among the questions this paper seeks to address.

While this contribution is not written in terms of double standards, it does assess the extent to which the FCNM can be considered to be respected in EU law and policy. It actually also goes one step further and investigates how the FCNM could provide guidance to the EU -once the commitment is there- to implement the existing competences and policies in a manner which contributes to the protection of minorities.

1 Professor of Human Rights Law, University of Louvain (Belgium) and College of Europe (Natolin); Member of the Global Law School Faculty, New York University. This study was inspired in part by a contribution prepared upon the request of the Secretariat of the Framework Convention for the Protection of National Minorities, for the Council of Europe intergovernmental working group on the rights of national minorities (DH-MIN).
1. *Introduction*

This essay seeks to identify the role the Framework Convention for the Protection of National Minorities has played hitherto in the law of the European Union, and how such a role could be developed further. The European Union has not been given explicit competences in the field of the protection of minorities. However, a number of provisions of the EU allow for the adoption of certain instruments which may contribute to improving such protection in the EU Member States. Moreover, to the extent that it has been given certain competences in fields not specifically related to the protection of minorities, both the institutions, bodies and agencies of the European Union, and the Member States acting under Union law, must comply with certain values, among which are minority rights. This reference has been further strengthened by the entry into force of the Treaty of Lisbon. As a result of this Treaty, the EU Charter of Fundamental Rights, initially proclaimed in 2000, has been given binding force. The Charter prohibits any discrimination based, *inter alia*, on grounds of membership of a national minority (art. 21), and it states that the Union shall respect cultural, religious and linguistic diversity (art. 22). The Treaty of Lisbon also introduces, for the first time, an explicit reference to ‘the rights of persons belonging to minorities’, in listing these rights among the values on which the Union is founded.

---


4 Article 6(1) of the Treaty on European Union as amended by the Treaty of Lisbon (referring to the EU Charter of Fundamental Rights in the revised form it has been proclaimed, in a revised form, on 12 December 2007 (OJ C 303 of 14.12.2007, p. 1)).

5 See also Art. 2(3) of the Treaty on European Union, as amened by the Treaty of Lisbon (referring to cultural and linguistic diversity within the Union).

6 Article 2, inserted into the Treaty on European Union by the Treaty of Lisbon. In the situation before the entry into force of the Treaty of Lisbon, the list of values on which the Union is founded does not include a reference to the rights of persons belonging to minorities (see Article 6(1) EU). The reference to the rights of persons belonging to minorities was already present in the Treaty establishing a Constitution for Europe, which was signed on 29 October 2004 but failed to achieve ratification following referenda held in France and in the Netherlands in May 2005. The reference to the rights of persons belonging to minorities was not agreed upon during the European Convention convened in February 2002, but was the result of the Intergovernmental Conference of 2003–2004, apparently at the insistence of Hungary. This is not typical: in general, governments have been more reluctant than parliamentary bodies to recognize minority rights; the European Convention responsible for...