Changing Paradigms in the Traditional Dichotomy of Old and New Minorities

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Abstract

In the current discussion on minority issues it is debated whether the scope of application of international treaties pertaining to minorities that are usually applied to historical, old minorities can be extended to new minority groups stemming from migration. Studying the interaction between traditional minorities and migrants or old and new minority groups is a rather new task because so far these topics have been studied in isolation from each other. It is also an important task for future research in Europe where many states have established systems of old minority rights, but have not yet developed sound policies for the integration of new minority groups originating from migration. An analysis of the differences and similarities of old and new minorities, their claims, needs and priorities will allow us to differentiate the catalogue of rights that can be demanded by, and granted to, different minority groups.

1. Conceptualising a Common Approach for the Protection of Old and New Minorities

The terms historical, traditional, autochthonous minorities – the so-called old minorities – refer to communities whose members have a distinct language and/or culture or religion compared to the rest of the population. Very often, they became minorities as a consequence of a re-drawing of international

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2 The Explanatory Report of the Framework Convention for the Protection of National Minorities states, rather ambiguously, that the term ‘inhabited … traditionally’ referred to by Art. 10 (2), Art. 11 (3), and Art. 14 (2) of the FCNM ‘does not refer to historical minorities, but only to those still living in the same geographical area.’ (Emphasis added) (para 66), at <http://conventions.coe.int>.
borders and their settlement area changing from the sovereignty of one country to another; or they are ethnic groups which, for various reasons, did not achieve statehood of their own and instead form part of a larger country or several countries.3

The new minority groups stemming from migration refer to groups formed by the decision of individuals and families to leave their original homeland and emigrate to another country generally for economic and, sometimes, also for political reasons.4 They consist, thus, of migrants and refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin.5

A crucial issue in discussing minority protection is that claims of minorities, migrants and historical minorities alike, are often perceived as a challenge and antagonistic to the traditional model of homogeneous ‘nation-states’

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3 It has to be noted that there is a subtle continuum between minority groups and indigenous peoples. Particularly in light of the complexity of the concept of ethnic minorities, it must be agreed that indigenous peoples constitute at least a special type of ethnic minority. According to the working definition of indigenous peoples given by the UN Special Rapporteur, José Martínez Cobo in his report to the then Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination Against Indigenous Populations, UN Doc. E/CN.4/Sub.2/1986/87, which led to the creation of the Working Group on Indigenous Populations, these are peoples that are native to the place in which they live, have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories but have lost their independent character as a result of colonial invasion. See also, the Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on 13 September 2007, UN Doc. GA/10612; and Art. 1(b) of ILO Convention 169 (1989) concerning indigenous and tribal peoples in independent countries.


5 It is important to note that some countries use regularly the term ‘minorities’ to refer to immigrants living on their territories. For instance, in the United Kingdom the term ‘ethnic minorities’ is used in preference to ‘migrants’. This terminological preference reflects a policy of regarding legally resident migrants (particularly those who were born in the country concerned) as a permanently established part of the population. The term ‘migrants’ is avoided because it not only implies that they moved to the country but also because it is simply incorrect to describe persons born in the country of migrant parents as ‘migrants’. See, John Murray, ‘Should Immigrants or Roma and Sinti be Regarded as Minorities?’, in: F. Matscher (ed.), Vienna International Encounter on Some Current Issues Regarding the Situation of National Minorities, Kehl/Strasbourg/Arlington: N.P. Engel Verlag 1997, p. 219. Use of the term ‘ethnic minority’ in such contexts however in no way necessarily implies the existence of any legal minority status. Its significance is rather administrative in that it may qualify them or their associations for various grants and make them potential beneficiaries of equal opportunities policies, but it does not necessarily entail other rights included in specific instruments on minority rights. See, in this regard, the position of the Netherlands, FCNM, List of Declarations, Status as of 30 June 2008, Declaration by the Netherlands, dated 16 February 2005, at <http://conventions.coe.int>.