Janus at Strasbourg: The Council of Europe between East and West

André Liebich

In this article I hope to throw some light on contemporary minority issues in Europe, East and West, by looking at the Council of Europe's experience in this domain. Stefan Troebst deals in detail with the Council's most important achievement in the area, the Framework Convention for the Protection of National Minorities.¹ It has been described both in the press and by Council of Europe spokespersons as 'the first legally binding international document in the field of minority protection establishing a code of conduct for adhering states'.² The Framework Convention, opened for signature in February 1995, has by now been ratified by twenty-four states, twice as many as required for it to enter into force. Looking beyond the Framework Convention to the context in which it must operate, I propose to enumerate some of the difficulties and implications of the Council of Europe's involvement in minority issues since 1989. The principal point I should like to make is that by including minority problems in East Central and Eastern Europe within its purview, the Council of Europe has, in fact, radically transformed the minority question throughout Europe as a whole.³

Upon its creation in 1949 the Council of Europe was entrusted with fostering democratic values and human rights in a continent where these were seen as threatened. One might imagine that as a guardian of fundamental principles the Council would have stood more in the forefront of political developments on the continent. In fact, this was not the case and the Council soon came to occupy a secondary role. True, the Parliamentary Assembly, the Committee of Ministers, the European Commission of Human Rights, the European Court of Human Rights, and the Strasbourg-based bureaucracy of the Council all

hummed busily along and, the Court in particular, chalked up a number of achievements to their credit. The mainstream of efforts at European integration and co-operation, however, took a different direction. On the one hand, beginning in the 1950s, these efforts developed within the institutions that came to make up the European Common Market, later the European Community, and, eventually, the European Union. On the other hand, as of 1975, the CSCE, later OSCE, brought together the two parts of Europe (as well as the USA and Canada) in an over-arching, all-European body that initially took the form of a recurrent conference and then, as of 1995, of a proper regional organisation.

The Council of Europe did not become the anchor of European integration and co-operation efforts, as many hoped and expected. It did maintain, however, its unique function as the beacon of Western values. Within the European Community it was often preferable to confide some delicate issues — the question of minorities might have been one of these — to an outside institution in order to spare member states' susceptibilities about interference in internal affairs. This solution also allowed the European Community to remain 'agnostic' in minority matters, that is, to avoid adopting a common position.4 Within the CSCE, as constituted at Helsinki, and in spite of human dimension implementation arrangements, agreement on values could only be formal or precarious as long as two ideological blocs confronted each other. For forty years, rights and values were the Council of Europe's preserve, largely because this allowed other, more important institutions to avoid quarrelling over them.

With the changes of 1989 to 1991, the Council of Europe found itself, perhaps to its own surprise, in a unique position. The ex-communist states flocked to join the Council of Europe for several reasons: first, they were all already members of the CSCE/OSCE so there was no need to petition for membership nor much prestige in belonging; second, the ex-communist states could only hope to join the European Community/European Union at some distant future date. Membership of the Council of Europe was more easily accessible and it was rightly seen as a step, or at least as a logical precondition, towards EC/EU membership. From a total of twenty-one the membership soared to forty and is still increasing.

Beyond the extension of membership and geographic scope, however, the Council assumed a new role, or to put it perhaps more accurately, extended the role it had previously played. The standards which the Council had set for its original West European members became a yardstick for the continent as a whole. The difference now lay in the fact that whereas the earlier members had joined the Council with the intention of vouchsafing already existing standards, the new members were called upon to attain these standards before they would

---