

Are the Copenhagen Criteria Undermined by the Lisbon Treaty?

I. INTRODUCTION

The EU enlargement eastwards admittedly managed to transform minority rights from historical, strategic and ideological issues to human rights ones.¹ Indeed, the issue of protecting racial and ethnic minorities has received a great deal of attention since the collapse of communism in 1989 and has contributed to a more value-oriented approach of the Union in this area. As of 1993, it was made explicitly an accession pre-condition for EU membership through the Copenhagen criteria.²

In retrospect, these criteria formed a loose framework of action. Implementation by candidate states in this sector was often unsatisfactory and partial. At the same time, the general vagueness of the framework was often instrumentalized by independent monitoring agencies and non-governmental

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1 For a discussion of the special nature of minority issues in Central and Eastern Europe, see Istvan Pogany, “Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?”, in Dierdre Fotrell and Bill Bowring (eds.), *Minority and Group Rights in the New Millennium* (Martinus Nijhoff Publishers, London, 1999) 141-161, at 148.

2 In 1993, at the Copenhagen European Council, the following membership criteria were defined for aspiring candidates to join the Union:

A candidate country must have achieved:

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligation of membership including adherence to the aims of political, economic and monetary union.

at <http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm>.

organisations mainly to criticize the accession candidates and much less to spot the limited results of the EU mechanism *per se*.³ However, despite, the unprecedented political attention and its central position in the enlargement waves of 2004 and 2007, the question of minority protection within the EU today remains confusing and to some extent misunderstood.⁴

The recent financial crisis in our continent has amply demonstrated that the EU “can live with democratic deficits more easily than with budgetary or administrative ones.”⁵ In the aftermath of enlargement, the absence of powerful incentives, as was the promise of EU membership, has not been conducive to the sustainability of minority protection rules, labelled as conditional before accession. This assumption holds, of course, provided that the political Copenhagen criterion is not replaced by other incentives of equivalent effect (e.g., EU sanctions, new legal bases or even alternative policy tools).⁶ Politically, any improvements after 2004 and 2007, wherever they existed, were mainly the fruit of minority-friendly national governments and domestic actors’ pressure. In cases in which the EU acted as an external triggering factor of incentives, even when supported by other international organizations such as the Council of Europe (CoE), change was less impressive. The examples of resistance to the adoption of fuller anti-discrimination legislation in Slovakia⁷ or Latvia’s reluctance to ratify

3 For example, the work of EUMAP for the period 2001-02 covering all candidate states to EU accession, under the auspices of the Open Society Institute is seminal in that respect. (Cf. Open Society Institute/EUMAP, *Monitoring the EU Accession Process: Minority Protection*, 2002, at <<http://www.soros.org/sites/default/files/overview.pdf>>).

4 Carter Johnson, “The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies Towards Accession Countries of Central, Eastern and South-Eastern Europe”, 13 *IJMG* (2006), 27-51, at 27.

5 Alex Pravda, “Introduction”, in Jan Zielonka and Alex Pravda (eds.), *Democratic Consolidation in Eastern Europe, Vol. 2*, (Oxford University Press, Oxford, 2001), 1-27, at 13.

6 Guido Schwellnus, Lilla Balazs and Liudmila Mikalayeva, “It Ain’t Over When it’s Over: The Adoption and Sustainability of Minority Protection Rules in New EU Member States”, in Frank Schimmelfennig and Florian Trauner (eds.), *Post-accession Compliance in the EU’s New Member States*, 13(2) *European Integration Online Papers*, at <http://eiop.or.at/eiop/index.php/eiop/article/view/2009_024a>, 3. Also discussed in Philip Levitz and Grigore Pop-Eleches, “Why No Backsliding? The EU’s Impact on Democracy and Governance Before and After Accession”, 43(4) *Comparative Political Studies* (2010), 457-485.

7 European Commission, *2002 Regular Report on Slovakia’s Progress Towards Accession*, COM (2002) 700 final, at 32, at <http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf>. See also, the discussion of the failed attempt to introduce in 2001 a comprehensive anti-discrimination law as discussed in Frank Schimmelfennig and Guido Schwellnus, “Political Conditionality and Convergence: The EU’s Impact on Democracy, Human Rights and Minority Protection in Central and Eastern Europe”, paper prepared for the CEEISA Conference, Tartu, Estonia, 25-27 June 2006, 19.