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The European Union and Minorities in 2010: A Renewed Commitment?

I. Introduction

The year 2010 marked the beginning of the post-Lisbon era in the European Union. This new era also witnessed a new dawn in the area of minority protection because the Treaty of Lisbon gave life to some remarkable new references to minorities in EU primary law.\(^1\) This change confirms an increasing ‘internalization’ of a topic that was mainly reserved for addressing states that were not (yet) member states of the EU, particularly during the enlargement phases.\(^2\) However, the protection of minorities is becoming increasingly as relevant within the 27 EU member states as it is externally. It is therefore important to look at the EU’s activities with regard to minorities. This is done here for the reporting period from 1 January to 31 December 2010. Part II is focused on the internal dimension, whereas part III documents efforts to protect minorities in the external sphere.

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II. Internal Dimension

A. Lisbon Induced Changes in EU Primary Law

The year 2010 witnessed the first year of the Treaty of Lisbon’s operation.\(^3\) The Treaty, for the first time in the history of the EU, introduces the word ‘minorities’ into EU primary law, thereby making explicit what was already acknowledged before: “respect for human rights, including the rights of persons belonging to minorities” is a value on which “the Union is founded”. Article 2 of the Treaty on European Union (TEU) also evidences the fact that this value is “common to the Member States in a society in which pluralism, non-discrimination, tolerance […] prevail”. Moreover, through the now legally binding Charter of Fundamental Rights of the European Union (hereinafter “the Charter”), the notion of ‘national minorities’ becomes a term of EU law: Article 21 of the Charter underlines that discrimination on the grounds of “membership of a national minority” is prohibited, whereas Article 22 emphasizes that the “Union shall respect cultural, religious and linguistic diversity”. The Treaty also stresses the value of diversity in the context of the general objectives of the Union: the latter shall “respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced” (Art. 3 (3) TEU). Moreover, a symbolic commitment to diversity within member states can be found in the fact that, for the first time ever, primary law provides member states with the explicit possibility to translate the Treaties into additional languages “that enjoy official status in all or part of their territory” and register a certified copy in these languages with the archives of the Council.\(^4\)

In the context of antidiscrimination, the Treaty of Lisbon gives effect to this ‘revamped’ general commitment to diversity. In Article 10 of the Treaty on the Functioning of the European Union (TFEU; the former EC Treaty), the EU is under an obligation to “combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” not only in the context of its antidiscrimination policy but also whenever “defining and implementing [any] of its policies and activities”.\(^5\) This newly introduced horizontal obligation goes further than Article 21 of the Charter. In the latter provision, the Charter merely prohibits the Union to discriminate on the grounds of “ethnic origin”, “language”, “religion”, “membership of a national minority”, “disability” or “sexual orientation”. The new horizontal clause, however, enables and at the same time obliges

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\(^3\) This subchapter is based on a lecture held at the 55th FUEN Congress in Ljubljana 12–15 May 2010.

\(^4\) See Art. 55(2) TEU. Despite the restrictive wording of para. 2 in the Declaration on Art. 55(2) TEU, there seems to be no legal argument that could prevent a member state to translate the Treaties and register the translation at any point of time it should wish to do so.

\(^5\) The EU’s antidiscrimination policy is enshrined in Art. 19 TFEU (the former Art. 13 TEC).