



HIGH COMMISSIONER ON NATIONAL MINORITIES

A Constitution for Europe: Enshrining minority rights

Words can make worlds of difference

At a solemn ceremony in Rome, on 29 October 2004, the Treaty establishing a Constitution for Europe was signed by the Heads of State or Government of 25 European Union member States and three candidate countries. For OSCE High Commissioner on National Minorities, Ambassador Rolf Ekéus, the event was much cause for celebration: A clause on minority rights that had gone missing had now found its way to Article I-2 of the Constitution.

BY KRZYSZTOF DRZEWICKI

How did this little-noticed but significant change come about and what is its likely impact?

Earlier, in June 1993, the European Council meeting in Copenhagen had accorded minority rights a prominent position — side by side with the guarantee of human rights. Defining the non-economic standards for the admission of Central and Eastern European countries into the European

Union, the Council specified:

*[M]embership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, **human rights and respect for and protection of minorities.*** (Emphasis has been added.)

Regrettably, however, there was no mention of a specific “minority clause” in the EU Charter of Fundamental Rights adopted by the European Council in Nice in December 2000. The draft European Constitution, completed on 10 July 2003 by the European Council’s Convention on the Future of Europe, was equally silent on the rights of minorities.

What happened to the Copenhagen criteria in the course of the European Union’s standard-setting? They were subsumed under Article I-57, Paragraph 1, of the Draft European Constitution, which stipulated that

Austria signs the Treaty establishing the EU Constitution in Rome, 29 October 2004.
Photos: ©European Community, 2005

the Union's values served to underpin conditions for eligibility for admission:

The Union shall be open to all European States which respect the values referred to in Article I-2, and are committed to promoting them together.

Compared with earlier EU documents, the enumeration of shared values under Article I-2 was an impressive effort to go beyond a mere set of lofty goals:

*The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and **respect for human rights**. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.*

Nevertheless, the "missing link" — the omission of the specific passage concerning minorities — was a source of profound disappointment in many international circles.

Was this approach to be construed as a reflection of a new position within the EU — that the protection of national minorities would now disappear from the EU agenda? What happened to the European system of values between 1993 and 2003, and why did the clause concerning minorities vanish from the catalogue of "values ... common to the Member States"?

The formulation in the Draft Constitution conveyed the impression that the minority clause served as a specific requirement only during the accession procedure, and that, after the enlargement, the EU no longer considered it worthwhile to call attention to it.

This interpretation risked weakening the position of the High Commissioner on National Minorities regarding his diplomatic and conflict-prevention efforts within non-EU States. The governments concerned would likely raise the "double-standards" argument; they would be emboldened to comply with minimum standards on the protection of national minorities only selectively and to ignore recommendations aimed at ensuring a higher level of integration of minorities into their societies.

It was this potentially worrying scenario that prompted the High Commissioner on National Minorities to raise the issue publicly. At a conference in Copenhagen on 5 November 2002, he stated unequivocally:

... standards on which the Copenhagen criteria are based should be universally applicable within and throughout the EU, in which case they should be equally — and consistently — applied to all Member States. Otherwise, the relationships between the existing and aspiring EU Member States would be unbalanced in terms of applicable standards.

One could argue, of course, that the rights of minorities are intrinsic to the concept and notion of human rights as a whole. However, the fact is that the Copenhagen European Council had made a conscious decision to single out the protection of minorities for special attention. Within the ambit of his responsibilities, it was incumbent upon the High Commissioner to do his utmost to ensure that the Draft Constitution placed the

The route to the Constitution

On 1 May 2004, 10 new countries joined the European Union: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.

Six months later, on 29 October 2004, representatives of the enlarged European Union — comprising some 450 million people, or 7.2 per cent of the world's population — signed the Treaty and Final Act establishing a Constitution for Europe in Rome's *Campidoglio*, in the *Sala Degli Orazi e Curiazi*. It was the same room in which the six original Member States — France, Germany, Italy, the Netherlands, Belgium and Luxembourg — had signed the Treaty establishing the European Community in 1957.

The candidate countries Bulgaria, Romania and Turkey signed the Final Act. Croatia, which had not participated in the European Convention's 16-month intensive work, did not sign the Final Act but attended as an observer.

The Treaty establishing a Constitution for Europe needs to

be ratified by all 25 member States of the enlarged Union. The deadline is end of October 2006.

The national parliaments of Hungary, Lithuania and Slovenia have already ratified the EU Constitution, with the Belgian and German parliaments following suit in May.

In some countries, ratification is subject to a referendum. Spain's voters said a firm "yes" on 20 February. France, Germany, Luxembourg and the Netherlands are due to hold referenda in the first half of 2005, and Portugal possibly in December. Dates have yet to be set in the Czech Republic, Denmark, Ireland, Portugal, Poland and the United Kingdom.

Sources: *EU Observer* and *CIDEL Project*



rights of minorities in sharper relief.

In the High Commissioner's view, the EU, in order to steer clear of accusations of failing to be even-handed, should adopt and apply its minority-related standards equally — extending them to candidate countries as well as to members.

Furthermore, the High Commissioner believed that the EU Constitution should include a clause on minority rights that would have an impact far beyond the EU itself and its members. It is generally agreed, after all, that a number of OSCE participating States will most likely not become EU members in the near future — or perhaps never will. With this in mind, an explicit minority clause would also serve to promote the application of EU values and standards in non-EU countries through trade and policies and the like. This made it even more imperative to have a legal stipulation setting out a single, consistent system of values and standards.

It was against this background that the OSCE High Commissioner on National Minorities took formal steps to turn to the Irish Foreign Minister under the EU presidency. In his letter of 14 January 2004, the High Commissioner advocated continuation of the validity of the Copenhagen political criteria for EU membership, proposing two alternative amendments to the Draft Constitution that would restore an explicit clause on the rights of minorities.

He proposed that Article I-2, outlining "The Union's values" be supplemented, following the words "respect for human rights" with either "including minority rights" or "including the rights of persons belonging to minorities".

The latter option was proposed to avoid any potential arguments that could arise from a collective reference to "minority rights". Similar proposals for the inclusion of a clause on minorities were also submitted by the Governments of Hungary and Romania.

The High Commissioner's proposal reflected a commendable improvement to the original formulation of the Copenhagen criteria. Whereas in Copenhagen, "democracy, the rule of law, human rights and respect for and protection of minorities", had been enumerated separately, the latest language recommended inserting "the rights of persons belonging to minorities" as an integral part of human rights (note the word "including").

This solution restores an adequate balance to Article I-2 by conveying a proper

Treaty and Constitution

The European Constitution is both a treaty subject to the rules of international law and a constitution, in that it contains elements of a constitutional nature. Consisting of four parts, the document:

- defines the European Union and its values, objectives, responsibilities, decision-making procedures and institutions;
- incorporates the Charter on fundamental rights;
- describes the policy and actions of the European Union; and
- contains the final clauses, including the procedures for approval and a possible revision of the Constitution.



understanding that the rights of persons belonging to minorities are merely a *lex specialis* — a special regulation — of the international law on human rights as a whole.

It came as a pleasant surprise to the High Commissioner and to other concerned parties that at their meeting in Brussels on 18 June 2004, Heads of State and Government placed their stamp of approval on the texts of a number of modified provisions of the Draft Constitution for Europe, which they subsequently signed on 29 October 2004.

Among the amended provisions — highlighted below — was the reformulated Article I-2:

*The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities.** These values are common to the Member States in a society **in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.***

The fruitful dialogue between the High Commissioner and the European Union on the "human dimension" of the Constitution for Europe is a reminder of the wisdom of ancient Roman legal tradition, in which values cannot be separated from instruments for their implementation. Indeed, the minority clause brings us closer to the Roman maxim, *Ubi jus, ibi remedium*. ("Where there is a right, there is a remedy.")

No less important, the integration of the clause within the European Constitution creates a climate more conducive to synergy between the High Commissioner and the European Union. And it increases the chances that the issue of national minorities will not disappear from the EU's radar screen.

Krzysztof Drzewicki is Senior Legal Adviser in the Office of the OSCE High Commissioner on National Minorities in The Hague. Earlier, he was a professor of international law at the University of Gdansk, Poland. He has written extensively on the international protection of human rights.

