

Post-Cold War European Security and the Developments on the Approach to National Minorities Protection

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I. Setting the Stage

The radical changes that were produced by the ending of the Cold War have determined new theoretical approaches to the issue of reviewing the security architecture and cooperation at international level. The "security" concept itself had a significant development, and its content extended well beyond its traditional military and territorial dimensions. Therefore, a view gained widespread support, that the risks and threats to the security of a state are no more of a predominantly military nature, but they include economic, social and political aspects¹.

This wide and systemic approach to the security concept was consecrated in the United Nations Organization, after the UN Security Council adopted the Resolution 688/1991 which explicitly linked the respect for human rights to the need to ensure international peace and security. Because this resolution authorized the intervention of a multinational coalition in Iraq in order to prevent the repressive actions of the Iraqi government against its Kurd minority, it was considered that it contributed to the strengthening of the approach that "the human rights issues are of international concern", whilst their infringement does represent a threat not only to the security of the neighboring but also to security of all states. Later in the 1990s the same approach that linked the national minorities issue with the international security have been the driving

force for the adoption of Resolutions 1160/1998, 1199/1998 and 1244/1999 with reference to infringement of human rights in the then Federal Republic of Yugoslavia, especially those of the Albanian minority in the Yugoslav province of Kosovo.

Furthermore, after the upsurge of old rivalries and ethnic tensions in international relations, with a special view to the Central and Eastern Europe, the extension of the semantic content of the concept of security had as a reference point the inclusion of the issues related to the respect for human rights and the rights of persons belonging to minorities. This approach has reflected the development of a **comprehensive concept of security**, which included, together with military, political, economic and environmental dimensions, a new component: the **societal dimension**. It was there the place where appropriate attention has been paid to the issue of human rights and minority protection².

The ethnic and nationalist disputes have been identified, principally in Central and Eastern Europe, as possible challenges to the territorial and political *status quo* of the region, with logical consequences for the European security. Suggestively enough, the Strategic Concept of NATO that was adopted by the Alliance's Rome Summit in 1991 considered that the "Risks to Allied security are less likely to result from calculated aggression against the territory of

the Allies, but rather from the adverse consequences of instabilities that may arise from the serious economic, social and political difficulties, including ethnic rivalries and territorial disputes, which are faced by many countries in Central and Eastern Europe..."³. After a decade or so, NATO reviewed its Strategic Concept in the occasion of the Washington Summit of 1999, but maintained most of its security assessment, when stating that "The security of the Alliance remains subject to a variety of military and non-military risks which are multi-directional and often difficult to predict. These risks include uncertainty and instability in and around the Euro-Atlantic area and the possibility of regional crises at the periphery of the Alliance, which could evolve rapidly. Some countries in and around the Euro-Atlantic area face serious economic, social and political difficulties. Ethnic and religious rivalries, territorial disputes, inadequate or failed efforts at reform, the abuse of human rights, and the dissolution of states can lead to local and even regional instability"⁴.

The same point of view was shared by another important institution with relevance for European security, the Western European Union, which stated in 1992 that "security in its broadest sense encompasses not only military but also political aspects, respect for human rights and fundamental freedoms, as well as economic, social and environmental aspects"⁵.

The interrelationship between security and respect for human rights, in particular those of persons belonging to national minorities, has been emphasized in the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe. The OSCE documents shared the view that

"issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State"⁶. In sharing this view, the OSCE participating states reflect the perception that the aggressive nationalism does represent a threat to global security and consider that "respect for human rights and fundamental freedoms, democracy and the rule of law is at the core at the OSCE's comprehensive security concept"⁷.

The Council of Europe documents include the same comprehensive approach to security concept, and at the highest political level, the Council of Europe member states expressed the clear position that "the protection of national minorities is an essential element of stability and democratic security in our continent"⁸.

At the same time, the new trends in European security, while determining a more acute sensitivity to the relation between security and the respect for human rights, have generated an impulse to set new norms and standards for the protection of national minorities. Whilst during the 1990's the WEU and NATO had no aim to set standards in this field, and at the European Union level there was no special development because the Community fora, acting in accordance with the subsidiarity principle, entrusted the member states with the task to ensure the national minorities protection, the main standard setting initiatives in this particular area found appropriate environment in the OSCE and the Council of Europe.

II. The European Norms and Standards

1. The OSCE Documents

The issue of national minorities protection represented an important point on the agenda of the Conference for Security and Cooperation in Europe (CSCE) from its inception in 1970's, but following a mixed set

of reservations from both Western and Communist countries, it did not found itself among items included in its list of priorities⁹.

The **Helsinki Final Act**, that was signed on 1 August 1975 by the Heads of State or

Government of 35 countries in Europe and North America, stipulated few references to minorities. The most important one was included in Principle VII from the "Declaration on Principles guiding relations between Participating States", and stated that "The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere"¹⁰.

The documents that were adopted by this security institution reflected an ever-growing interest for the issue of national minorities protection, but tangible results were not possible until the fall of the Communist regimes in Central and Eastern Europe. The post-1989 accomplishments of the pan-European forum were directed both

to norm setting and the monitoring of the States' compliance with the commitments that were undertaken. In this respect, the most important developments were the documents adopted by the **1990 Copenhagen meeting** of the CSCE Conference on Human Dimension and the **1991 Geneva meeting** of experts on national minorities issues. After the transformation of the CSCE into an organization, following the decisions of the 1994 Budapest summit meeting, there were no major normative developments. However, a special mentioning should be made to the relevant provisions of the **Charter for European Security**, that was adopted in the occasion of the 1999 Istanbul summit meeting, as well as the efforts for conceptual redefinition that have been undertaken by the OSCE High Commissioner on National Minorities.

a) The Copenhagen Document

The OSCE made an important breakthrough when the **Copenhagen Document** was adopted, on 29 June 1990, by the second meeting of the OSCE Conference on Human Dimension. An entire chapter – Section IV, articles 30-40 – of this document has been devoted to the protection of national minorities. The result was a remarkable set of provisions "as far as the quality and the quantity of the concepts are concerned"¹¹.

It was reaffirmed that "respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States".

The document stated that "persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will". In particular, a number of rights have been

recognized for the persons belonging to national minorities, namely:

- the right to use freely their mother tongue in private as well as in public;
- the right to establish and maintain their own educational, cultural and religious institutions, organizations or associations;
- the right to profess and practise their religion;
- the right to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;
- the right to disseminate, have access to and exchange information in their mother tongue;
- the right to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations;
- the right to effective participation in public affairs, including participation in the

affairs relating to the protection and promotion of the identity of such minorities.

The Copenhagen document did not attempt to adopt a definition of "national minorities" and reflected the approach specific for the post-Second World War period, in which the rights are granted to the individuals, to the persons belonging to national minorities, and not to the groups as such. However, some of the articles were well beyond the limits of the international law. In particular, an example is given, despite its vague formulation, by article 35, which stated that "The Participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in

accordance with the policies of the State concerned"¹².

The Copenhagen Document had a further importance by the way it evoked, for the first time in an international document, the special problems related to the Gypsi/Roma population, which in the same period were equated as "the new Jews" of the post-Communist Europe¹³.

The standards included in the Copenhagen Document do continue to represent a landmark in any action aimed at assuring the protection of national minorities and a reference point for any new endeavour in the field. It is a proof in itself the very fact that Romania explicitly indicated the Copenhagen Document in the bilateral treaties with Germany and Hungary – article 15 in both cases –, when specifying the enforcement, as legal commitments, of the provisions which define the rights of persons belonging to national minorities as they are stipulated in the pertinent documents of the UN, the OSCE and the Council of Europe.

b) The Report of the Geneva Meeting of Experts

The way to approach the issue of national minorities protection remained virtually unchanged after the Geneva meeting of experts on National Minorities, that was organized on 1-19 July 1991. The Geneva Report reiterated the rights that were mentioned in the Copenhagen Document, underlined a number of principles (for instance, non-discrimination) for defining the behaviour towards national minorities, and insisted on actions to be undertaken for giving substance to these principles. Special attention was devoted to the participation of persons belonging to national minorities in public life, dialogue and consultation, special measures for these persons on a non-discriminatory basis with regard to the other citizens of the State, and taking into account the historical and territorial aspects relevant for national minorities.

Aware that there was no widely accepted approach on the issue, the Geneva report took

note of the measures adopted by some participating States for the promotion of national minorities protection and listed fourteen measures of this sort – the so-called "shopping list" –, for instance the representation in the decision making and administrative bodies, local administration and autonomy, the setting up of joint permanent commissions for facilitating the dialogue in the trans-border regions etc.

The Geneva meeting of experts has identified no solution to the definition of "national minorities", and any attempt to promote the "collective rights" was bound to be immediately rejected by the vast majority of states, on the assumption that they can feed the danger of separation of national minorities from the state where they currently live.

The most significant achievement of this meeting was the general acceptance that "problems related to national minorities, as

well as the respect of obligations and international commitments with reference to the rights of persons belonging to them, are

issues of legitimate international concern, and therefore do not constitute an exclusively domestic issue of the respective State"¹⁴.

c) Recent OSCE Standard Setting in the Field

The normative *acquis* established in Copenhagen and Geneva found itself reaffirmed by the subsequent OSCE documents, including the ones that were adopted by the **OSCE Istanbul Summit**, on 17-19 November 1999. As far as the **Charter on European Security** is concerned, while reasserting that the protection and promotion of the rights of persons belonging to national minorities are essential factors for democracy, peace, justice and stability within, and between, participating States, it is worth mentioning one further normative development concerning the issue of national minorities. In Paragraph 19¹⁵ of the **Charter**, the OSCE governments recognized that respect for human rights, including the rights of individuals belonging to national minorities,

is not just an end in itself but also a means to strengthen the territorial integrity and sovereignty of states. They also acknowledged that one way to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing state is to provide them with a degree of autonomy¹⁶.

It is not here the place for an in-depth discussion about this development. However, these provisions should be approached in line with the open debate at the time of Istanbul OSCE Summit – and still today! – on the search for a solution to the crisis in Kosovo, a crisis that was fundamentally related to the Yugoslav authorities failure in handling the problems specific for national minorities.

d) Mechanisms for the Protection of National Minorities

The norms setting activity in the OSCE for the protection of national minorities went hand in hand with the concern to ensure compliance with the commitments that the Participating States assumed in this field. A first attempt, that was promoted prior to 1989, was the creation of a "Human Dimension Mechanism", which consisted of a complicated system of independent expert missions and rapporteurs¹⁷. It was specifically a Cold War envisaged instrument and remained mainly as a theoretical construction.

The most important mechanism created by the organization – and the most effective institution that was imagined by this pan-European structure – is the one expressed by the activity of the **OSCE High Commissioner on National Minorities**. In accordance with its mandate, as approved by the **1992 Helsinki summit**, the High Commissioner can provide "early warning" and as appropriate "early action" at the

earliest possible stage in regard to tensions involving national minority issues¹⁸. On the other hand, the mandate made clear that the High Commissioner will not consider "violations of OSCE commitments with regard to an individual person belonging to a national minority"¹⁹, which implies that the High Commissioner deals with the problems related to national minorities as such, the possible implication being a tendency to approach the "national minority" as a collective entity.

The activity of this OSCE institution was and continue to be based on "quiet diplomacy", and is dedicated to a balanced approach, that is capable enough to highlight its main role as the "early warning" instrument of the organization. In real terms, the core philosophy of the High Commissioner on National Minorities is contained in the general approach on the relationship between the State and the

minorities, as explicitly expressed, in October 1995, during the OSCE Human Dimension Implementation Meeting in Warsaw, by the then OSCE High Commissioner, the Dutch Ambassador Max van der Stoep:

"... it is in my view the duty of the state to see what it can do to help if other groups in society face problems they cannot solve on their own. The minority, on the other hand, has to realise that it cannot claim a privileged position. In formulating its demands, it also has to take into account that poorer states can often not afford what richer countries can provide without much effort.

The state, in turn, will have to realise that its interests are better served by following a generous policy towards minorities than to stick to a minimalist approach. If persons belonging to a national minority feel that the state takes their interests into account, they will develop a more positive attitude towards it. Feelings of loyalty will prevail over any tendency towards separatism.

But let us not forget that minorities also have an important role to play in helping to prevent conflicts. If a minority refuses to recognize that it shares a common destiny with the majority in the state within which it is living, if it constantly seeks to isolate itself from the rest of society and insists on institutional arrangements, which would promote such isolation, the reaction on the other side might be increasingly suspicious and negative. And thus a process of polarisation can develop, which can ultimately lead to confrontation and conflict.

On the other hand, the minority can also try to follow a policy, which combines efforts to safeguard its identity with the recognition that living together on one territory and consequently sharing so many common interests inevitably requires a certain degree of integration into society. By rejecting

isolation, by recognizing that the fates of minority and majority are linked, the minority will also be able to create more understanding for the vital need it feels to maintain its own identity"²⁰.

The efforts undertaken by the OSCE High Commissioner in late 1990s were concentrated mainly on certain recurrent issues and themes, which have become the subject of his attention in a number of States in which he was particularly involved. With a view to achieving an appropriate and coherent application of some relevant minority rights in the OSCE area, the High Commissioner elaborated, together with the internationally recognized experts from the (Hague) Foundation on Inter-Ethnic Relations, three sets of recommendations: the **Hague Recommendations regarding the Education Rights of National Minorities** (1996), the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** (1998) and the **Lund Recommendations on the Effective Participation of National Minorities in Public Life** (1999). In the occasion of the 1999 OSCE Istanbul Summit, these recommendations have not been accepted by the Participating States as common standards for the entire OSCE community of states, and therefore any specific reference to the above mentioned recommendations was not able to meet the consensus rule. However, it is to be noted that the **Istanbul Declaration**, after commending the essential work of the High Commissioner, underlined "the requirement that laws and policies regarding the educational, linguistic and participatory rights of persons belonging to national minorities conform to applicable international standards and conventions" and emphasized the importance of increasing the "efforts to implement the recommendations of the High Commissioner on National Minorities"²¹.

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It is no doubt that the OSCE made great progress in its endeavours to protect the national minorities. At the same time, it was

confronted with two main difficulties: on the one hand, there is the vague language in which the documents are drafted (see for

example article 35 of the Copenhagen Document); on the other hand, the political – and not legal – character of its documents became one of its main weaknesses. In reference to this latter aspect, it is however worth mentioning a widespread view on the activity of the OSCE that "it is not obligatory for a commitment to be legally binding to have binding force"²².

Despite the fact that the OSCE norms and commitments were well beyond the present framework of the international law, they do essentially reflect the traditional approach in

accordance to which the rights are granted to the "persons belonging to national minorities" and in no case to the national minorities as such. The normal consequence of this aspect is the very fact that the OSCE had no solution for identifying a definition to the concept of "national minority", as well as for the relationship between individual and collective approach in defining its rights²³.

These problems have also been the critical point for the other pan-European institution: the Council of Europe.

2. The Council of Europe Documents

Since its foundation in 1949, the Council of Europe had a special and constant interest for the safeguarding of human rights and fundamental freedoms, which in fact does constitute the underlying mission of the Strasbourg organization. This particular interest was reflected in the promotion of the **European Convention for the Safeguarding of Human Rights and Fundamental Freedoms**, that was opened for signature on 4 November 1950 and entered into force in 1953. It is important to note that the Convention was in line with the prevalent mood in the aftermath of the Second World War and therefore did not include clear and direct provisions with reference to national minorities issue. But without specially mentioning the national minorities, it is worth signaling that art. 14 specified that "the enjoyment of the rights and freedoms set forth in this Convention shall be ensured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"²⁴.

During the Cold War period there were attempts to pass an additional protocol to the European Convention on the rights of persons

belonging to minorities. A first attempt was blocked in 1968 by the European Court on Human Rights²⁵, and afterwards the Council of Europe, in particular its Parliamentary Assembly, expressed in different instances its interest on the minorities situation in the then Communist countries (for example, resolutions or recommendations on minorities issue in Romania, Bulgaria or the USSR)²⁶.

In the years when the Cold War came to an end, the resurgence of inter-ethnic conflicts in the area of former Yugoslavia and former USSR, as well as the increasing internal tensions within some European states that have had national minorities on their territory, have stimulated the Council of Europe member states to launch a review of the practices and the relationships that were between and within states, in order to codify new legal norms and commitments for the protection of minorities. The initiatives were directed towards the elaboration of a **European Charter for Regional or Minority Languages**, but in particular to the creation of a legally binding document for ensuring the national minorities protection (be it a distinctive and separate Convention or an additional protocol to the European Convention on Human Rights).

a) European Charter for Regional or Minority Languages

This document was adopted by the Committee of Ministers on 22 June 1992,

then opened for signature on 2 October 1992 and entered into force on 1 March

1998. Its specific relevance for the measures aimed at protecting the minority groups is provided, for instance, by article 1, in which there is a definition of the terms used in the Charter. Thus, the "**Regional of Minority languages**" were considered the ones "traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population" and "different from the official language(s) of that State". Furthermore, by "territory in which the regional of minority language is used", the Charter specified "the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and

promotional measures provided for in this Charter".

The Part III of the Charter stipulates the measures to promote the use of regional or minority languages in public life, which refer to the use of those languages in education, public services, media, cultural activities, economic and social life, trans-border cooperation between the states parties to the Charter. The implementation of these measures was entrusted to a mechanism (articles 15 to 17) that involved reports from the states parties and the functioning of a "committee of experts", working in close cooperation with the Secretary General of the Council of Europe and reporting to the Committee of Ministers on the problems identified²⁷.

b) First Endeavours for an International Legal Instrument for the Protection of National Minorities

The first initiative to elaborate a legal instrument was carried forward by the European Commission for Democracy through Law (the Venice Commission), when adopting in February 1991 a proposal for a "European Convention for the Protection of Minorities". In article 1 of the proposed Convention it was emphasized that "the international protection of the rights of ethnic, linguistic and religious minorities, as well as the rights of persons belonging to those minorities, as guaranteed in this Convention, is an essential component of the international protection of human rights and therefore is an area for international cooperation". It is within this approach a clear distinction between "the rights of minorities" and "the rights of persons belonging to minorities", the former being an obvious expression of the "collective rights". At the same time, the Convention proposed a definition of the protected groups and included procedures of implementation that were centered on a "European Committee for the Protection of Minorities"²⁸.

After the rejection of this proposal by the Council of Europe's Committee of Ministers, the efforts were channeled in the Strasbourg organization for the setting up of an additional

protocol to the European Convention of Human Rights on the rights of minorities. The text of the Additional Protocol was adopted on 1 February 1993 by the Parliamentary Assembly of the Council of Europe through the **Recommendation 1201 (1993)**²⁹, and submitted for approval to the Committee of Ministers. The proposed Protocol included a definition of "national minority" as a "group of persons in a state who:

- a. reside on the territory of that state and are citizens thereof;
- b. maintain longstanding, firm and lasting ties with that state;
- c. display distinctive ethnic, cultural, religious or linguistic characteristics;
- d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state;
- e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language".

Moreover, the text of the proposed additional protocol, despite making use of the widely accepted formula of "persons

belonging to national minorities" – that implies the individual rights for the persons concerned –, included explicitly in Article 12, for the first time in a draft international legal document, the concept of "collective rights": "Nothing in this protocol may be construed as limiting or restricting an individual right of persons belonging to a national minority or a collective right of a national minority embodied in the legislation of the contracting state or in an international agreement to which that state is a party".

On the other hand, another part of that text – Article 11 – aroused controversy by making an eventual connection between autonomy and ethnicity: "In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special

status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state".

The draft additional protocol was dismissed by the First Summit of the Council of Europe – that was held in Vienna, on 8-9 October 1993 –, on the grounds that there was no consensus on the interpretation of the term "national minority"³⁰. Consequently, the Vienna Summit decided to elaborate two legal instruments on the protection of national minorities: a **Framework Convention for the Protection of National Minorities** and an **Additional Protocol "complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities"**³¹.

c) The Framework Convention for the Protection of National Minorities

This Convention opened for signature on 1 February 1995 and came into force on 1 February 1998. It is the first legally-binding multilateral European text in the field of national minorities protection. Contrary to the Recommendation 1201, it does not provide for a definition for the "national minorities", neither identifies the rights to be protected. But it sets out, in programme-type provisions, the principles to be respected by the states parties to it. "These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account"³². Among other things, the Framework Convention aims to:

- Combat discrimination and promote full and effective equality;
- Promote the conditions necessary to preserve and develop the culture of national minorities;
- Guarantee their freedom of assembly, freedom of association and freedom of conscience and expression;

- Not to hinder, but even encourage, transfrontier contacts;
- Promote participation in public life and prohibit forced assimilation;
- Foster access to the media;
- Allow the use of the minority language and provide opportunities to learn it etc.

Despite the fact that a Framework Convention does not require a specific mechanism to supervise its implementation, in this case it provides for the monitoring of compliance with its provisions. The Convention entrusts this task to the Committee of Ministers of the Council of Europe, with the assistance of an "advisory committee". In accordance with the Convention, the contracting parties are obliged to present, within one year from the entry into force, a complete report on legislative and other measures to implement its provisions. After that, each party submits reports periodically and at the request of the Committee of Ministers.

The adoption of the Framework Convention triggered immediately the reaction of the Parliamentary Assembly of the Council of Europe, the body that

produced the Recommendation 1201. On 31 January 1995, the day before the Framework Convention was opened for signature, the Parliamentary Assembly reiterated its position by adopting the **Recommendation 1255 (1995) on the protection of the rights of national minorities**. Welcoming the adoption of the Framework Convention, the Recommendation 1255 stated (in its para 7) that "The convention is weakly worded. It formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation of the contracting states but not a right which individuals may invoke. Its implementation

d) Current Developments

The Parliamentary Assembly of the Council of Europe continues its efforts aimed at making accepted a legally binding treaty, that defines the "national minority" and specifies the rights to be protected in this context. The rapporteur of the Committee on legal affairs and human rights, Rudolf Bindig prepared since 1995 a report on "the rights of national minorities" that was presented and adopted in the occasion of the winter session of the Assembly in January 2001. The Bindig Report relaunched the initiative to elaborate an Additional Protocol to the European Convention on Human Rights, based on the text of the Recommendation 1201 (1993), with a larger definition for the concept of "national minority" and retaining the full content of its very disputed articles 11 and 12. The rapporteur underlined that this draft protocol has become part of the international law by means of its inclusion in the bilateral treaties concluded between Romania and Hungary (1996), Hungary and Slovakia (1995), and Romania and Ukraine (1997), but he didn't mention the interpretation included in the Appendix of the Romanian-Hungarian Treaty³⁵.

The Bindig Report recommends also the adoption of an additional protocol to the Framework Convention for giving the European Court of Human Rights or a

machinery is feeble and there is a danger that, in fact, the monitoring procedures may be left entirely to the governments"³³. It proposed a list of twelve rights, covering the substantive provisions of the Recommendation 1201, to be taken into consideration in the drafting exercise for the Additional Protocol on cultural rights³⁴. The proposal had no follow-up.

As for the Additional Protocol on cultural rights, it has never been completed, remaining a dead letter from the decisions of the 1993 Vienna Summit Declaration of the Council of Europe.

general judicial authority of the Council of Europe the power to give advisory opinions concerning the interpretation of the Framework Convention. Furthermore, it asks the Committee of Ministers to attach to the Council of Europe Commissioner for Human Rights a person with special responsibility for issues concerning the protection of minorities' rights, making suitable financial provision for this purpose³⁶.

The Bindig Report was adopted by the Parliamentary Assembly on 23 January 2001 and the Recommendation 1492 (2001) that it formulated was submitted to the Committee of Ministers³⁷. It is worthy mentioning that on 13 June 2002 the latter structure of the Council of Europe – the Committee of Ministers –, after analyzing the Recommendation 1492 (2001), adopted a reply to the Parliamentary Assembly which included the following assessment:

"With regard to the proposal for an additional protocol to the European Convention on Human Rights concerning the rights of national minorities, which would include the definition of national minority contained in Assembly Recommendation 1201(1993), the Committee of Ministers considers that it is somewhat premature to reopen the debate on this project. The Committee of Ministers

would stress in this connection that, when Protocol No.12 to the European Convention on Human Rights comes into force, any discrimination against a member of a national minority, including discrimination based on association with such a minority, will be covered by the general prohibition on discrimination³⁸.

In this context, it is important to note that a further development in this field, with specific relevance for the aim to ensure the protection of national minorities, was the adoption of the 12th Additional Protocol to the European Convention on Human Rights on non-discrimination, which was opened for signature and ratification in Rome, on 4 November 2000³⁹.

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The work for a definition of rights and freedoms in order to ensure the protection of national minorities is continuously carried forward within the Council of Europe, together with a clear support for the indivisibility of human rights. In this context, it is worth mentioning there are rights - to profess a religion or belief, to participate in free and fair elections, freedom of assembly, of association - that are being considered as implying a collective dimension by way they are exercised. They are the expression of a trend in international affairs that consider the collective rights as not necessarily representing a challenge to the state's sovereignty and territorial integrity. It is, in

fact, in the philosophy of the Strasbourg organization the belief that the group rights are not directed against the individual rights, but they are "nothing else than the right of the individual to receive from groups the means he needs for his self-fulfillment... Since the group derives its own rights from serving the individuals who compose it, it has no rights against the rights of the individual. In the hierarchy necessitated by the plurality of persons, the individual takes precedence over the group, and the groups themselves can organize themselves only according to the closeness of their relationship with the individual"⁴⁰.

3. Central and South-East European Regional/Subregional approach

All the regional/subregional structures that were formed in Central and South-Eastern Europe after the ending of the Cold War - the Central European Initiative (CEI), the Visegrad Group, the South-East European Cooperation Process (SEECP), the South-East Cooperation Initiative (SECI), different trilateral or quadrilateral forms of cooperation, and recently the Stability Pact for South East Europe - have paid a special attention to the relationship between the strengthening of security and the protection of national minorities. All their political declarations and other documents reflect this specific concern for the security in the region. But they were not able - with one exception - to agree on a document specifically aimed at assuring the protection of minorities on their respective countries.

The exception was the Central European Initiative.

From the very outset of their cooperation, the member states of the Central European Initiative devoted particular attention to questions related to national minorities. Such an approach reflected their intention to give political cooperation a higher profile within the CEI scope of activities with a special regard to the problem of national minorities in the Central European region. It was expected that a positive solution of national minorities issue at regional level could offer a model to be applied within a greater European framework.

At their meeting in Turin, on 18-19 November 1994, the Foreign Ministers of the CEI countries welcomed the drawing up

of the **CEI Instrument for the Protection of Minority Rights**, which was opened for signature to CEI Member States, the EU Associated Countries and other interested countries. Up to date, 11 out of the 16 current CEI member states signed the Instrument. Romania signed the CEI Instrument in 1997.

The CEI Instrument is a political document, reflecting the internationally accepted norms and principles. As well as the Framework Convention for the Protection of National Minorities of the Council of Europe, the CEI Instrument is based on the rights of persons belonging to national minorities to be exercised either individually or in common with others. In the CEI Instrument the minorities are also considered as an integral part of the State and society where they live.

III. Preliminary Assessment

1. After this brief analysis of the international/European approach to the protection of national minorities, one could emphasise that:

- the issue of national minorities is no longer an internal problem of a State, it is an issue of international concern;
- the protection is ensured for the national minorities as entities, but the rights are granted to individuals;
- no definition for national minorities was accepted by the Governments, despite the proposals contained in the draft of the **European Convention for the Protection of Minorities**, forwarded in February 1991 by the European Commission for Democracy through Law, the **Recommendation 1201/1993** of the Parliamentary Assembly of the Council of Europe and the subsequent similar texts adopted by the Parliamentary body of the organization.

2. The approach included in the documents adopted by the OSCE and the Council of Europe is the one defining the

The CEI Instrument does not provide for a formal control mechanism. The task to follow the observance of its objectives was entrusted to the CEI Working Group on Minorities, which therefore has the functions of an implementation mechanism. The implementation is thus monitored through regular exchanges of information and opinion, the member states being encouraged to share their experiences in the field for their mutual benefit.

It is worth noting that since the launching in 1999 of the Stability Pact for South Eastern Europe, the Working Group on Minorities – which is one of the components of the Stability Pact Regional Table – decided to pay more attention in its work to the provisions of the CEI Instrument which are at the same time priorities of the Stability Pact Working Table on Democratization and Human Rights.

post-Second World War period, which places the national minorities issue in the wider context of the problem of respect for human rights and fundamental freedoms. Therefore the emphasis is on individual rights and the concept used refers to the "rights of persons belonging to national minorities". However, it came soon to the fore the idea that the simple protection of national minorities by means of ensuring respect for human rights and fundamental freedoms does not suffice.

3. On the other hand, it is already a common place to say that observance of human rights, fundamental freedoms and democratic principles are a precondition for a stable and peaceful Europe. The same also applies to observance of international standards concerning national minorities.

Lasting peace and stability in Europe can only be achieved if the provisions of the most relevant instruments – mainly the **OSCE Copenhagen Document** and the **Council of Europe Framework Convention for the Protection of National Minorities** – are fully implemented.

The implementation of these international norms and standards is essential for the protection of the identity of national minorities, but will often not be able to provide an adequate solution to specific problems a particular minority has to cope with. Therefore, in such cases, a positive dialogue has to be developed between the state and the minority.

4. The provisions included within the documents adopted by the European institutions went much further in terms of quality and quantity than the similar ones that were produced in the UN system or within the regional structures on the other continents. This is in itself the reflection of the actual importance of the national minorities issue and at the same time the recognition that their protection is not only a mere humanitarian issue, but also a political one, that pertains to the specificity of the historical development of Europe.

These provisions set the standards on the protection of national minorities. Being the product of negotiations among states, which are less tempted to make concessions in this field, these standards should be understood as a minimal approach, and therefore as starting point for the States' actions to build up a system for the protection of national minorities, and in no case the final end of this activity. It is in fact a widespread belief that nothing prevent the States to enact legislation and to implement it in a more generous way, thus going beyond the limits of the European standards.

5. As far as the concept of "collective rights"/"group rights" is concerned, it was advanced by some in the international debate on the protection of national minorities, but it was also rejected on historical grounds by the

vast majority of states. This rejection was motivated on the fact that past experiences witnessed the opposition of the group rights to the individual ones, and in recent history the call for group rights led to war and interethnic conflict. It is in fact a line of thinking that considers that, legally speaking, the concept of "collective rights" is a non-sense in itself, as long as the bearer of the rights has no legal personality, and therefore it has not the capacity to exercise certain rights and to be subject to certain duties.

However, the present development of the relationship between individual rights and collective rights is no more defined by an exclusive approach. The rights that were identified in the Council of Europe as having a collective dimension by way they were exercised, have been perceived as not being directed against the individual rights and thus capable to be used for the benefit of the individual, if he/she is to be a complete human being. It was rightly argued that the so-called collective/group rights would have a weak significance if the group members were not in a position to enjoy them individually. Consequently, the collective rights seem to be promoted by their supporters as a corollary to the individual rights, which will stay as the fundamental reference of the modern democratic society.

But a positive approach to collective rights within the documents specific to the European organizations is not likely to be promoted in the foreseeable future, and the main difficulty is still produced by the lack of a generally accepted definition of the concept of "national minorities". In the meantime the need for supplementary and special measures to ensure an effective protection of national minorities has already been highlighted, so that the way for new developments in this particular field is open.

* * *

After this brief outline of the conceptual and institutional developments to the protection of National Minorities within the main European institutions, it is appropriate to see how the Romanian authorities

formulated their approach in this field after the ending up of the Communist regime in December 1989. But a closer look to this issue will be the topic for a further study.

Note:

¹ Barry Buzan, "New patterns of global security in the twenty-first century", in *International Affairs*, 67, 3, 1991, p. 431-451; and by the same author, *People, States and Fear. An Agenda for International Security Studies in the post-Cold War era*, Harvester-Wheatsheaf, London, 1991.

² Barry Buzan, "New patterns of global security in the twenty-first century", p. 47-49.

³ Press communique, NAC S-1 (91) 85, *The Alliance's New Strategic Concept agreed by the Heads of State and Government participating in the meeting of North Atlantic Council in Rome on 7th - 8th November 1991*.

⁴ Press Communique, NAC- S(99)65, *The Alliance's Strategic Concept. Approved by the Heads of State and Government participating in the meeting of North Atlantic Council in Washington D.C. on 23rd and 24th April 1999*.

⁵ *Declaration of the Extraordinary Meeting of the WEU Council of Ministers with States of Central Europe*, Bonn, 19th June 1992.

⁶ *Report of the Meeting of Experts on National Minorities*, CSCE, Geneva, 1991.

⁷ *Charter for European Security*, OSCE, Istanbul, November 1999, para. 19.

⁸ *Vienna Declaration*, Council of Europe Summit, 9 October 1993. See also Catherine Lalumiere, *Speech on the occasion of the Interregional meeting organized by the Council of Europe in advance of the World Conference on Human Rights, "Human Rights at the Dawn of the 21st Century"*, Strasbourg, 28 January 1993, in *Human Rights at the Dawn of the 21st Century*, Council of Europe Press, Strasbourg, 1993; the same for Daniel Tarschys, "The Council of Europe: towards a vast area of democratic security", in *NATO Review*, Vol. 42, No. 6/1995-1/1996.

⁹ Arie Bloed, "The CSCE and the Protection of National Minorities", in *ODIHR Bulletin*, vol.I, no.3, 1993, p.1.

¹⁰ *The Final Act of the Conference on Security and Cooperation in Europe*, Helsinki, 1975.

¹¹ Arie Bloed, *op. cit.*, p. 1.

¹² *Document of the Copenhagen Meeting of the Conference on the Human Dimension*, CSCE, Copenhagen, 1990.

¹³ Victor Yves Ghebali, "Les valeurs de Grande Europe, produit du laboratoire politique de la CSCE", *Relations Internationales*, 73, printemps 1993, p. 73.

¹⁴ *Report of the Meeting of Experts on National Minorities*, CSCE, Geneva, 1991.

¹⁵ The full content of Paragraph 19 reads as follows:

"We reaffirm that respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security. We commit ourselves to counter such threats to security as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism. The protection and promotion of the rights of persons belonging to national minorities are essential factors for democracy, peace, justice and stability within, and between, participating States.

In this respect we reaffirm our commitments, in particular under the relevant provisions of the Copenhagen 1990 Human Dimension Document, and recall the Report of the Geneva 1991 Meeting of Experts on National Minorities. Full respect for human rights, including the rights of persons belonging to national minorities, besides being an end in itself, may not undermine, but strengthen territorial integrity and sovereignty. Various concepts of autonomy as well as other approaches outlined in the above-mentioned documents, which are in line with OSCE principles, constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State. We condemn violence against any minority. We pledge to take measures to promote tolerance and to build pluralistic societies where all, regardless of their ethnic origin, enjoy full equality of opportunity. We emphasize that questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law.

We reaffirm our recognition that everyone has the right to a nationality and that no one should be deprived of his or her nationality arbitrarily. We commit ourselves to continue our efforts to ensure that everyone can exercise this right. We also commit ourselves to further the international protection of stateless persons."

¹⁶ The Paragraph 19 provisions were perceived by some as "unexpected". See Victor Yves Ghebali, "The OSCE's Istanbul Charter for European Security", in *NATO Review*, no. 1, Spring-Summer 2000, p. 24.

¹⁷ Arie Bloed, *The CSCE and the Protection of National Minorities...*, p. 1. In 1990, this type of missions have been sent in Estonia, the Republic of Moldova and in the area of former Yugoslavia.

¹⁸ *CSCE Helsinki Document 1992, The Challenges of Change*, Helsinki, 1992, chap. II (3).

¹⁹ *Ibidem*, chap. II (5c).

²⁰ *Report of Max van der Stoep, the OSCE High Commissioner on National Minorities, OSCE implementation meeting on human dimension issues*, Warsaw, 2-19 October 1995

²¹ *Istanbul Declaration*, November 1999, para. 30.

- ²² Peter van Dijk, "The Final Act of Helsinki - Basis for a Pan European System?", in *Netherlands Yearbook of International Law*, 1980, p. 110, apud Arie Bloed, *Two Decades of the CSCE Process...*, p. 22-23.
- ²³ Patrick Thornberry, *Minorities and Human Rights Law*, Minority Rights Group, 1991, p. 30.
- ²⁴ *The Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 1950.
- ²⁵ *Ibidem*, p. 28.
- ²⁶ Cf. *Ibidem*.
- ²⁷ *European Charter for Regional or Minority Languages*, Strasbourg, 1992.
- ²⁸ See P. Thornberry, *op. cit.*, p. 28.
- ²⁹ *Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights*, Strasbourg, 1993.
- ³⁰ See paragraph 4 of the Explanatory Report to the *Framework Convention for the Protection of National Minorities* (doc. H (95) 10).
- ³¹ See the relevant decisions in *Vienna Declaration*, Council of Europe Summit, 9 October 1993.
- ³² See paragraph 11 of the Explanatory Report to the Framework Convention (doc. H (95) 10).
- ³³ Para 7 of the *Recommendation 1255 (1995)*.
- ³⁴ For a critical approach, see Heinrich Klebes, "The Council of Europe's Framework Convention for the Protection of National Minorities", in *Human Rights Law Journal*, [Strasbourg], 28 April 1995, Vol. 16, No. 1-3, p. 92-116.
- ³⁵ "The Contracting Parties agree that Recommendation 1201 does not refer to collective rights, nor does it obligate Parties to grant those persons the right to a special territorial autonomy status based on ethnic criteria".
- ³⁶ *Rights of National Minorities*, Report, Committee on Legal Affairs and Human Rights, Rapporteur: Rudolf Bindig, Germany, Socialist Group, Doc. 8920, 29 January 2001 revised.
- ³⁷ *Recommendation 1492 (2001) on the rights of national minorities*.
- ³⁸ Cf. Committee of Ministers, 799th meeting, 13 June 2002, *Rights of national minorities - Parliamentary Assembly Recommendation 1492/2001* (REC 1492 (2001), GR-H (2002) CB8).
- ³⁹ The Protocol no. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination, was adopted by the Council of Europe Committee of Ministers on 27 June 2000 and opened for signature by member States on 4 November 2000 in Rome, on the occasion of the European Ministerial Conference on Human Rights. This Protocol overcomes the current non-discrimination provision of the European Convention (Article 14), which is of a limited kind, because it only prohibits discrimination in the enjoyment of one or the other rights guaranteed by the Convention. The new Protocol removes this limitation and guarantees that no-one shall be discriminated against on any ground by any public authority.
- ⁴⁰ See the introductory speech delivered by the then Secretary General of the Council of Europe, Catherine Lalumiere at the "Interregional meeting organized by the Council of Europe in advance of the World Conference on Human Rights", *Human Rights at the Dawn of the 21st Century*, Strasbourg, 28 January 1993, in *loc. cit.*